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MARITIME SECURITY AND COMPETITIVENESS ACT OF 1993

SEPTEMBER 22, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STUDDS, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 2151]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 2151) to amend the Merchant Marine Act, 1936, to establish the Maritime Security Fleet program, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Maritime Security and Competitiveness Act of 1993".

SEC. 2. PURPOSE OF THE MERCHANT MARINE ACT, 1936.

Section 101 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101) is amended to read as follows:

"SEC. 101. FOSTERING DEVELOPMENT AND MAINTENANCE OF MERCHANT MARINE.

"The Secretary of Transportation shall carry out this Act in a manner that ensures the existence of an operating fleet of United States documented vessels that is—

"(1) sufficient to carry the domestic water-borne commerce of the United States and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times;

"(2) adequate to serve as a naval auxiliary in time of war or national emergency;

"(3) owned and operated by citizens of the United States, to the extent practicable;

"(4) composed of the best-equipped, safest, and most modern vessels;

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"(5) manned with the best trained and efficient personnel who are citizens of the United States; and

"(6) supplemented by modern and efficient United States facilities for shipbuilding and ship repair.".

SEC. 3. MARITIME SECURITY FLEET PROGRAM.

(a) The Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.) is amended by inserting after title III the following new title:

"TITLE IV—MARITIME SECURITY FLEET PROGRAM

"SEC. 401. ESTABLISHMENT OF MARITIME SECURITY FLEET.

"The Secretary of Transportation shall establish a fleet of active commercial vessels to enhance sealift capabilities and maintain a presence in international commercial shipping of United States documented vessels. The fleet shall be known as the 'Maritime Security Fleet'.

"SEC. 402. COMPOSITION OF FLEET.

"The Fleet shall consist of privately owned United States documented vessels for which there are in effect operating agreements.

"SEC. 403. VESSELS ELIGIBLE FOR ENROLLMENT IN FLEET.

"(a) IN GENERAL.—A vessel is eligible to be enrolled in the Fleet if the Secretary decides, in accordance with this section, that it is eligible. The Secretary may decide whether a vessel is eligible to be enrolled in the Fleet only pursuant to an eligibility decision application submitted to the Secretary by the owner or operator of the vessel. The Secretary shall make such a decision by not later than 90 days after the date of submittal of an eligibility decision application for the vessel by the owner or operator of the vessel.

"(b) VESSEL ELIGIBILITY, GENERALLY.—Except as provided in subsection (c), the Secretary shall decide that a vessel is eligible to be enrolled in the Fleet if—

"(1) the person that will be the contractor with respect to an operating agreement for the vessel agrees to enter into an operating agreement with the Secretary for the vessel under section 404;

"(2) the person that will be a contractor with respect to an operating agreement for the vessel is a citizen of the United States;

"(3)(A) the vessel is a United States documented vessel on May 19, 1993;

"(B) the vessel is—

"(i) in existence on May 19, 1993;

"(ii) a United States documented vessel after May 19, 1993; and

"(iii) not more than 10 years of age on the date of that documentation;

"(C) the vessel is built and, if rebuilt, rebuilt in a United States shipyard;

"(D) the vessel is built in a shipyard that is not a foreign subsidized shipyard under a contract entered into before May 19, 1993;

"(E)(i) the vessel is built in a foreign shipyard under a contract entered into on or before May 19, 1993; and

"(ii) the owner has contracted to build another vessel for enrollment in the Fleet in a United States shipyard that will be delivered within 30 months after the effective date of an operating agreement for the vessel referred to in clause (i), or the Secretary finds and certifies in writing that a United States shipyard cannot sell a vessel to the owner at the world price due to the unavailability of series transition payments under title XIV to build that vessel; or

"(F)(i) the vessel is built under a contract entered into after May 19, 1993;

"(ii) the proposed owner of the vessel solicited nationwide bids for at least 6 months to build the vessel in a United States shipyard;

"(iii) the Secretary finds and certifies in writing that a United States shipyard cannot sell a vessel to the proposed owner at the world price due to the unavailability of series transition payments under title XIV to build that vessel;

"(iv) the vessel is delivered from the foreign shipyard within 30 months after the Secretary's certification under clause (iii); and

"(v) the vessel is substantially the same type and design as the vessel described in the solicitation made under clause (ii); and

"(4) the vessel is self-propelled and is—

"(A) a container vessel with a capacity of at least 750 Twenty-foot Equivalent Units;

"(B) a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 Twenty-foot Equivalent Units;

"(C) a LASH vessel with a barge capacity of at least 75 barges;

"(D) a vessel subject to a contract under title VI on May 19, 1993; or

"(E) any other type of vessel that is determined by the Secretary to be suitable for use by the United States for national defense or military purposes in time of war or national emergency.

"(c) DETERMINATIONS OF ELIGIBILITY.—

"(1) DETERMINATIONS REQUIRED.—The Secretary shall make determinations under subsection (b) for each vessel for which an eligibility decision application is submitted under this section.

"(2) DETERMINATION REGARDING CERTIFICATION.—The Secretary shall—

"(A) make the finding and certification under paragraph (3)(E)(ii) for a vessel, or determine not to, by not later than 60 days after the date of receipt of an eligibility decision application for the vessel; and

"(B) make the finding and certification under paragraph (3)(F)(iii) for a vessel, or determine not to, by not later than 60 days after the closing date of the solicitation pursuant to paragraph (3)(F)(ii) for the vessel.

"(3) WRITTEN EXPLANATION.—The Secretary shall provide to the person that submits an eligibility application for a vessel a written explanation of any decision that the vessel is not eligible for enrollment in the Fleet.

"(d) LIST OF ELIGIBLE VESSELS.—

"(1) IN GENERAL.—The Secretary shall maintain a list of vessels that the Secretary decides in accordance with this section are eligible to be enrolled in the Fleet.

"(2) REMOVAL OF VESSELS FROM LIST.—The Secretary shall remove a vessel from the list maintained under this subsection, and the vessel shall not be an eligible vessel for purposes of this title—

"(A) at any time that the conditions for eligibility under subsection (b) are not fulfilled for the vessel; or

"(B) if the status of the person who submitted an eligibility decision application for the vessel, as owner or operator of the vessel, changes and after that change—

"(i) the owner or operator of the vessel fails to submit a new eligibility decision application for the vessel; or

"(ii) such an application is not approved by the Secretary.

"SEC. 404. OPERATING AGREEMENTS, GENERALLY.

"(a) REQUIREMENT FOR ENROLLMENT OF VESSELS.—A vessel may be enrolled in the Fleet only if it is an eligible vessel for which the owner or operator of the vessel applies for and enters into an operating agreement with the Secretary under this section.

"(b) PRIORITY FOR AWARDING AGREEMENTS.—Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

"(1) VESSELS OWNED BY CITIZENS.—

"(A) PRIORITY.—First, for any vessel that is—

"(i) owned and operated by persons who are citizens of the United States under section 2 of the Shipping Act, 1916; or

"(ii) less than 5 years of age and owned and operated by a corporation that is—

"(I) eligible to document a vessel under chapter 121 of title 46, United States Code; and

"(II) affiliated with a corporation operating or managing other United States documented vessels for the Secretary of Defense or chartering other vessels to the Secretary of Defense.

"(B) LIMITATION ON NUMBER OF OPERATING AGREEMENTS.—The total number of operating agreements that may be entered into by a person under the priority in subparagraph (A)—

"(i) for vessels described in subparagraph (A)(i), may not exceed the sum of—

"(I) the number of United States documented vessels the person operated in the foreign commerce of the United States (except mixed coastwise and foreign commerce) on January 1, 1993; and

"(II) the number of United States documented vessels the person chartered to the Secretary of Defense on that date; and

"(ii) for vessels described in subparagraph (A)(ii), may not exceed 4 vessels.

"(C) TREATMENT OF RELATED PARTIES.—For purposes of subparagraph (B), a related party with respect to a person shall be treated as the person.

"(2) OTHER VESSELS OWNED BY CITIZENS AND GOVERNMENT CONTRACTORS.—To the extent that amounts are available after applying paragraph (1), any vessel that is—

"(A) owned and operated by—

"(i) citizens of the United States under section 2 of the Shipping Act, 1916, that have not been awarded an operating agreement under the priority established under paragraph (1); or

"(ii)(I) eligible to document a vessel under chapter 121 of title 46, United States Code; and

"(II) affiliated with a corporation operating or managing other United States documented vessels for the Secretary of Defense or chartering other vessels to the Secretary of Defense; and

"(B) on the list maintained under section 403(d).

"(3) OTHER VESSELS.—To the extent that amounts are available after applying paragraphs (1) and (2), any vessel that is—

"(A) owned and operated by a person that is eligible to document a vessel under chapter 121 of title 46, United States Code; and

"(B) on the list maintained under section 403(d).

"(c) AWARD OF AGREEMENTS.—

"(1) IN GENERAL.—The Secretary shall award operating agreements within each priority under subsection (b) (1), (2), and (3) under regulations prescribed by the Secretary.

"(2) NUMBER OF AGREEMENTS AWARDED.—Regulations under paragraph (1) shall provide that if appropriated amounts are not sufficient for operating agreements for all vessels within a priority under subsection (b) (1), (2), or (3), the Secretary shall award to each person submitting a request a number of operating agreements that bears approximately the same ratio to the total number of vessels in the priority, as the amount of appropriations available for operating agreements for vessels in the priority bears to the amount of appropriations necessary for operating agreements for all vessels in the priority.

"(3) TREATMENT OF RELATED PARTIES.—For purposes of paragraph (2), a related party with respect to a person shall be treated as the person.

"(d) TIME LIMIT FOR DECISION ON ENTERING OPERATING AGREEMENT.—The Secretary shall enter an operating agreement for a vessel within 90 days after making the decision that the vessel is eligible to be enrolled in the Fleet under section 403(a).

"(e) EFFECTIVE DATE OF OPERATING AGREEMENT.—The effective date of an operating agreement may not be later than the later of—

"(1) the date the vessel covered by the agreement enters into the trade required under section 405(a)(1)(A);

"(2) the date the vessel covered by the agreement is withdrawn from an operating differential subsidy contract under title VI;

"(3) the date of termination of an operating differential subsidy contract under title VI that applies to the vessel; or

"(4) the date of the expiration or termination of a charter of the vessel to the United States Government that was entered into before the date of the enactment of the Maritime Security and Competitiveness Act of 1993.

"(f) EXPIRATION OF OFFERS FOR AGREEMENTS.—Unless extended by the Secretary, an offer by the Secretary to enter into an operating agreement under this section expires 120 days after the date the offer is made.

"(g) LENGTH OF AGREEMENTS.—An operating agreement is effective for 10 years from the effective date of the agreement.

"(h) REPAYMENT REQUIREMENTS.—

"(1) NONCOMPLIANCE.—A contractor that fails to comply with the terms of an operating agreement shall be liable to the United States Government for all amounts received by the contractor as payments for the vessel under this title with respect to the period of that noncompliance, and for interest on those amounts determined under paragraph (3).

"(2) FAILURE TO OPERATE REPLACEMENT VESSEL.—A contractor under an operating agreement that covers a vessel that is 25 or more years of age and that fails to replace the vessel as provided in section 405(a)(3) (A) or (B) shall be liable to the United States Government for all amounts received by the contractor as payments for the vessel under this title with respect to periods after the date the vessel becomes 25 years of age, and for interest on those amounts determined under paragraph (3).

"(3) DETERMINATION OF INTEREST.—Interest under paragraphs (1) and (2) shall be at an annual rate equal to 125 percent of the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for auctions of 3 month United States Treasury bills settled during the quarter preceding the date of the failure to comply or the failure to replace, respectively.

"(i) PROHIBITION ON AGREEMENTS FOR CERTAIN VESSELS.—The Secretary may not enter into an operating agreement for a vessel that is owned or operated by a person that was a contractor for the vessel under an operating agreement terminated under section 405(a)(10), before the end of the term of the agreement that was terminated.

"(j) BINDING OBLIGATION OF GOVERNMENT.—An operating agreement constitutes a contractual obligation of the United States Government to pay the amounts provided for under that agreement.

"SEC. 406. TERMS OF OPERATING AGREEMENTS.

"(a) OPERATING AGREEMENT REQUIREMENTS.—An operating agreement shall, during the effective period of the agreement, provide the following:

"(1) OPERATION AND DOCUMENTATION.—The vessel covered by the operating agreement—

"(A) shall be operated in the foreign trade or domestic trade allowed under a registry endorsement for the vessel issued under section 12105 of title 46, United States Code;

"(B) may not be operated in the coastwise trade of the United States or in mixed coastwise and foreign trade, except for coastwise trade allowed under a registry endorsement issued for the vessel under section 12105 of title 46, United States Code; and

"(C) shall be documented under chapter 121 of title 46, United States Code.

"(2) ANNUAL PAYMENTS.—

"(A) IN GENERAL.—The Secretary shall pay the contractor, in accordance with this subsection, the following amounts for each fiscal year in which the vessel is operated in accordance with the agreement:

"(i) For fiscal year 1994, $2,300,000.

"(ii) For each fiscal year thereafter, $2,100,000.

"(B) LIMITATION.—The Secretary shall not pay any amount pursuant to this paragraph for any day in which the vessel is—

"(i) under a charter to the United States Government that was entered into before the date of the enactment of the Maritime Security and Competitiveness Act of 1993; or

"(ii) covered by an operating differential subsidy contract under title VI.

"(3) TERMINATION BASED ON AGE OF VESSEL.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the operating agreement shall terminate on the later of—

"(i) the date the vessel covered by the agreement is 25 years of age, or

"(ii) the date the vessel covered by the agreement is 30 years of age, in the case of an agreement that covers a vessel that is repowered in a United States shipyard after the effective date of the operating agreement and before the vessel is 25 years of age.

"(B) EXCEPTION.—The operating agreement shall not terminate under subparagraph (A) if the contractor agrees to acquire a replacement for the vessel from among vessels on the list maintained under section 403(d), and—

"(i) in the case of a vessel to be replaced with a new vessel, the contractor enters into a binding contract with a shipyard that requires the shipyard to deliver the replacement vessel by not later than 30 months after the later of the date the operating agreement is entered into or the date the operating agreement would otherwise terminate under subparagraph (A); or

"(ii) in the case of a vessel to be replaced with an existing vessel, the contractor acquires the replacement vessel from among vessels on the list maintained under section 403(d), by not later than 12 months after the later of the date the operating agreement is entered into or the date the operating agreement would otherwise expire under subparagraph (A).

"(4) AVAILABILITY OF VESSEL.—

"(A) IN GENERAL.—On a request of the President during time of war or national emergency or when considered by the President, acting through the Secretary in consultation with the Secretary of Defense, to be necessary in the interest of national security, and subject to subparagraph (B), the contractor as soon as practicable shall, as specified by the Secretary—

"(i) make the vessel covered by the agreement available to the Secretary under a time charter; or

"(ii) provide space on the vessel covered by the agreement to the Secretary on a guaranteed basis.

"(B) CONDITION FOR CHARTER.—The Secretary shall allow a contractor to comply with this paragraph by providing space on a vessel under subparagraph (A)(ii) unless the Secretary determines that it is necessary in the interest of national security that the contractor make the vessel available under a time charter.

"(5) DELIVERY OF VESSEL.—The contractor shall deliver a vessel to the Secretary pursuant to a time charter under paragraph (4)(A)(i), as specified in the request for the vessel—

"(A) at the first port in the United States the vessel is scheduled to call after the date of receipt of the request;

"(B) at the port in the United States to which the vessel is nearest on the date of receipt of the request; or

"(C) in any other reasonable manner authorized by the agreement and specified in the request.

"(6) DELIVERY COSTS.—In addition to amounts paid under paragraph (2), the Secretary shall reimburse the contractor for costs incurred by the contractor in delivering the vessel covered by the agreement to the Secretary in accordance with the agreement.

"(7) COMPENSATION.—In addition to amounts paid under paragraph (2), the Secretary shall pay the contractor, as provided in the operating agreement, reasonable compensation at reasonable commercial rates for the period of time the vessel is chartered or the contractor provides space on the vessel under paragraph (4).

"(8) REQUIRED OPERATION.—

"(A) IN GENERAL.—A vessel covered by the operating agreement shall be operated in the trade required under paragraph (1), and under conditions eligible for payment under this title, for at least 320 days in a fiscal year, including days during which the vessel is dry-docked, surveyed, inspected, or repaired.

"(B) REDUCTION IN PAYMENTS.—If a vessel operates in the trade required under paragraph (1), and under conditions eligible for payment under this title, for less than the time required under subparagraph (A), the payments required under paragraph (2) shall be reduced on a pro-rata basis to reflect the lesser time in that operation.

"(9) SUBSTITUTION OF VESSELS AUTHORIZED.—The contractor may substitute for the vessel covered by the agreement another vessel on the list maintained under section 403(d).

"(10) OTHER TERMINATION.—The operating agreement shall terminate if—

"(A) in the case of a vessel that transports less than 12,000 tons of bulk cargo under the agreement—

"(i) the vessel covered by the agreement is not operated under an operating agreement for one year; and

"(ii) a substitute for that vessel is not operated under the agreement during that year; or

"(B) the contractor notifies the Secretary that the contractor intends to terminate the agreement, by not later than 60 days before the effective date of the termination.

"(b) PAYMENTS.—

"(1) IN GENERAL.—The amount required to be paid by the Secretary each year to a contractor under an operating agreement pursuant to subsection (a)(2)—

"(A) shall be paid at a pro rated amount at the beginning of each month in equal installments; and

"(B) except as provided in paragraph (2), may not be reduced by reason of operation of the vessel covered by the agreement to carry civilian or military preference cargoes under—

"(i) section 901(a), 901(b), or 901b;

"(ii) section 2631 of title 10, United States Code; or

"(iii) the Act of March 26, 1934 (48 Stat. 500).

"(2) REDUCTION FOR PREFERENCE CARGO.—A contractor with respect to a vessel may not receive any payment under this title for any day in which the vessel is engaged in transporting more than 12,000 tons of preference cargo described in paragraph (1)(B) that is bulk cargo (as defined in section 3 of the Shipping Act of 1984).

"(c) REDELIVERY OF VESSELS.—The Secretary shall, upon the termination of the need for which a vessel is delivered under subsection (a)(4), return the vessel to the contractor—

"(1) at a place that is mutually agreed upon by the Secretary of Defense and the contractor; and

"(2) in the condition in which it was delivered to the Secretary, excluding normal wear and tear.

"(d) TRANSFER OF OPERATING AGREEMENTS.—A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any other person that is a citizen of the United States, after notification of the Secretary in accordance with regulations prescribed by the Secretary, unless the transfer is disapproved by the Secretary within 90 days after the date of that notification. A transfer shall not be effective before the end of that 90-day period. A person to whom an agreement is transferred may receive payments from the Secretary under the agreement only if the vessel to be covered by the agreement after the transfer is on the list maintained under section 403(d).

"SEC. 406. NONCONTIGUOUS TRADE RESTRICTIONS.

"(a) PROHIBITION.—

"(1) IN GENERAL.—Except as provided in this section, a contractor may not receive any payment under this title—

"(A) if the contractor or a related party with respect to the contractor, directly or indirectly owns, charters, or operates a vessel engaged in the transportation of cargo in noncontiguous trade other than in accordance with a waiver under subsection (b), (c), or (d); or

"(B) if the contractor is authorized to operate a vessel in noncontiguous trade under such a waiver, and there is a—

"(i) material change in the domestic ports served by the contractor from the ports permitted to be served under the waiver;

"(ii) material increase in the annual number or the frequency of sailings by the contractor from the number or frequency permitted under the waiver; or

"(iii) material increase in the annual volume of cargo carried or annual capacity utilized by the contractor from the annual volume of cargo or annual capacity permitted under the waiver.

"(2) LIMITATIONS ON PROHIBITION.—Paragraph (1) applies to a contractor only in the years specified for payments under the operating agreement entered into by the contractor.

"(b) GENERAL WAIVER AUTHORITY.—

"(1) IN GENERAL.—Except as provided in subsection (c), the Secretary may waive, in writing, the application of subsection (a) to a contractor pursuant to an application submitted in accordance with this subsection, unless the Secretary finds that—

"(A) the waiver would result in unfair competition to any person that operates vessels as a carrier of cargo in a service exclusively in the noncontiguous trade for which the waiver is applied;

"(B) subject to paragraph (6), existing service in that noncontiguous trade is adequate; or

"(C) the waiver will result in prejudice to the objects or policy of this title or Act.

"(2) TERMS OF WAIVER.—Any waiver granted by the Secretary under this subsection shall state—

"(A) the domestic ports permitted to be served;

"(B) the annual number or frequency of sailings that may be provided; and

"(C)(i) the annual volume of cargo permitted,

"(ii) for containerized or trailer service, the annual 40-foot equivalent unit shipboard container and trailer or vehicle or general cargo capacity permitted, or

"(iii) for tug and barge service, the annual barge house cubic foot capacity and the annual barge deck general cargo capacity, or 40-foot equivalent unit container, trailer, or vehicle capacity, permitted.

"(3) APPLICATIONS FOR WAIVERS.—An application for a waiver under this subsection may be submitted by a contractor and shall describe, as applicable, the nature and scope of—

"(A) the service proposed to be conducted in a noncontiguous trade under the waiver; or

"(B) any proposed material change or increase in a service in a noncontiguous trade permitted under a previous waiver.

"(4) ACTION ON APPLICATION AND HEARING.—

"(A) NOTICE AND PROCEEDING.—Within 30 days after receipt of an application for a waiver under this subsection, the Secretary shall—

"(i) publish a notice of the application; and

"(ii) begin a proceeding on the application under section 554 of title 5, United States Code, to receive—

"(I) evidence of the nature, quantity, and quality of the existing service in the noncontiguous trade for which the waiver is applied;

"(II) a description of the proposed service or proposed material change or increase in a previously permitted service;

"(III) the projected effect of the proposed service or proposed material change or increase in existing service; and

"(IV) recommendations on conditions that should be contained in any waiver for the proposed service or material change or increase.

"(B) INTERVENTION.—An applicant for a waiver under this subsection, and any person that operates cargo vessels in the noncontiguous trade for which a waiver is applied and that has any interest in the application, may intervene in the proceedings on the application.

"(C) HEARING.—Before deciding whether to grant a waiver under this subsection, the Secretary shall hold a public hearing in an expeditious manner, reasonable notice of which shall be published.

"(5) DECISION.—The Secretary shall complete all proceedings and hearings on an application under this subsection and issue a decision on the record within 90 days after receipt of the final briefs submitted for the record.

"(6) LIMITATION ON CONSIDERATION OF CERTAIN EXISTING SERVICE.—

"(A) LIMITATION.—In determining whether to grant a waiver under this subsection for noncontiguous trade with Hawaii, the Secretary shall not consider the criterion set forth in paragraph (1)(B) if a qualified operator—

"(i) is a contractor, and

"(ii) operates 4 or more vessels in foreign commerce in competition with another contractor.

"(B) QUALIFIED OPERATOR.—In this paragraph, the term 'qualified operator' means a person that on July 1, 1992, offered service as an operator of containerized vessels, trailer vessels, or combination container and trailer vessels in noncontiguous trade with Hawaii and the Johnston Islands (including a related party with respect to the person).

"(c) WAIVERS FOR EXISTING NONCONTIGUOUS TRADE OPERATORS.—

"(1) IN GENERAL.—The Secretary shall waive the application of subsection (a) to a contractor pursuant to an application submitted in accordance with this subsection if the Secretary finds that the contractor, or a related party or predecessor in interest with respect to the contractor—

"(A) engaged in bona fide operation of a vessel as a carrier of cargo by water—

"(i) in a noncontiguous trade on July 1, 1992; or

"(ii) in furnishing seasonal service in a season ordinarily covered by its operation, during the 12 calendar months preceding July 1, 1992; and

"(B) has operated in that service since that time, except for interruptions of service resulting from military contingency or over which the contractor (or related party or predecessor in interest) had no control.

"(2) TERMS OF WAIVER.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the level of service permitted under a waiver under this subsection shall be the level of service provided by the applicant (or related party or predecessor in interest) in the relevant noncontiguous trade during, for year-round service, the 6 calendar months preceding July 1, 1992, or for seasonal service, the 12 calendar months preceding July 1, 1992, determined by—

"(i) the domestic ports called;

"(ii) the number of sailings actually made, except as to interruptions in the service in the noncontiguous trade resulting from military con-

tingency or over which the applicant (or related party or predecessor in interest) had no control; and

"(iii) the volume of cargo carried or, for containerized or trailer service, the 40-foot equivalent unit shipboard container, trailer, or vehicle or general cargo capacity employed, or, for tug and barge service, the barge house cubic foot capacity and barge deck general cargo capacity or 40-foot equivalent unit container, trailer, or vehicle capacity, employed.

"(B) CERTAIN CONTAINERIZED VESSELS.—If an applicant under this subsection was offering service as an operator of containerized vessels in noncontiguous trades with Hawaii, Puerto Rico, and Alaska on July 1, 1992, a waiver under this subsection for the applicant shall permit a level of service consisting of—

"(i) 104 sailings each year from the West Coast of the United States to Hawaii with an annual capacity allocated to the service of 75 percent of the total capacity of the vessels employed in the service on July 1, 1992;

"(ii) 156 sailings each year in each direction between the East Coast or Gulf Coast of the United States and Puerto Rico with an annual capacity allocated to the service of 75 percent of the total capacity of its vessels employed in the service on the date of the enactment of the Maritime Security and Competitiveness Act of 1993; and

"(iii) 103 sailings each year in each direction between Washington and Alaska with an annual capacity allocated to the service in each direction of 100 percent of the total capacity of its vessels employed in the service on July 1, 1992.

"(C) CERTAIN TUGS AND BARGES.—If an applicant under this subsection was offering service as an operator of tugs and barges in noncontiguous trades with Hawaii, Puerto Rico, and Alaska on July 1, 1992, a waiver under this subsection for the applicant shall permit a level of service consisting of—

"(i) 17 sailings each year in each direction between ports in Washington, Oregon, and Northern California and ports in Hawaii with an annual barge house cubic foot capacity and annual barge deck 40-foot equivalent unit container capacity in each direction of 100 percent of the total of the capacity of its vessels employed in the service during the 6 calendar months preceding July 1, 1992, annualized;

"(ii) 253 sailings each year in each direction between the East Coast or Gulf Coast of the United States and Puerto Rico with an annual 40-foot equivalent unit container or trailer capacity equal to 100 percent of the capacity of its barges employed in the service on the date of the enactment of the Maritime Security and Competitiveness Act of 1993;

"(iii) 37 regularly scheduled tandem tow rail barge sailings and 10 additional single tow rail barge sailings each year in each direction between Washington and the Alaskan port range between and including Anchorage and Whittier with an annual capacity allocated to the service in each direction of 100 percent of the total rail car capacity of its vessels employed in the service on July 1, 1992;

"(iv) 8 regularly scheduled single tow sailings each year in each direction between Washington and points in Alaska (not including the port range between and including Anchorage and Whittier, except occasional deviations to discharge incidental quantities of cargo) with an annual capacity allocated to the service in each direction of 100 percent of the total capacity of its vessels employed in the service on July 1, 1992; and

"(v) unscheduled, contract carrier tug and barge service between points in Alaska south of the Arctic Circle not served by the common carrier service permitted under clause (iii) and points in the contiguous 48 States, with an annual capacity allocated to that service not exceeding 100 percent of the total capacity of the equipment that was dedicated to service south of the Arctic Circle on July 1, 1992, and actually utilized in that service in the 2-year period preceding that date.

"(D) ANNUALIZATION.—Capacity otherwise required by this paragraph to be permitted under a waiver under this subsection shall be annualized if not a seasonal service.

"(E) ADJUSTMENTS.—

"(i) Each written waiver granted by the Secretary under this subsection shall contain a statement that the annual capacity permitted under this waiver in any direction shall increase for a calendar year

by the percentage of increase during the preceding calendar year in the real gross product of the State or territory to which goods are transported in the noncontiguous trade covered by the waiver, or its equivalent economic measure as determined by the Secretary if the real gross product is not available, and that the increase shall not be considered to be a material change or increase for purposes of subsection (a)(1)(B).

"(ii) The increase in permitted capacity under clause (i) in the noncontiguous trade with Alaska shall be allowed only to the extent the operator actually uses that increased capacity to carry cargo in the permitted service in the calendar year immediately following the preceding increase in gross product. However, if an operator operating exclusively containerized vessels in that trade on July 1, 1992, carries an average loan factor of at least 90 percent of permitted capacity (including the capacity, if any, both authorized and used under the previous sentence) during 9 months of any one calendar year, than in the next following calendar year and thereafter, the requirement that additional capacity must bo used in the immediately following year does not apply.

"(F) SERVICE LEVELS NOT INCREASED BY TERMINATION OF AGREEMENT.—The termination of an operating agreement under section 405(a)(10) shall not be considered to increase a level of service specified in subparagraph (A), (B), or (C) if the contractor under the agreement enters into another operating agreement after that termination.

"(3) APPLICATIONS FOR WAIVERS.—For a waiver under this subsection a contractor shall submit to the Secretary an application certifying the facts required to be found under paragraph (1) (A) or (B), as applicable.

"(4) ACTION ON APPLICATION.—

"(A) NOTICE.—The Secretary shall publish a notice of receipt of an application for a waiver under this subsection within 30 days after receiving the application.

"(B) HEARING PROHIBITED.—The Secretary may not conduct a hearing on an application for a waiver under this subsection.

"(C) SUBMISSION OF COMMENTS.—The Secretary shall give every person operating a cargo vessel in a noncontiguous trade for which a waiver is applied for under this subsection and who has any interest in the application a reasonable opportunity to submit comments on the application and on the description of the service that would be permitted by any waiver that is granted by the Secretary under the application.

"(5) DECISION ON APPLICATION.—Subject to the time required for publication of notice and for receipt and evaluation of comments by the Secretary, an application for a waiver under this subsection submitted at the same time the applicant applies for inclusion of a vessel in the Fleet shall be granted in accordance with the level of service determined by the Secretary under this subsection by not later than the date on which the Secretary offers to the applicant an operating agreement with respect to that vessel.

"(6) CHANGE OR INCREASE IN SERVICE.—Any material change or increase in a service that is subject to a waiver under this subsection is not authorized except to the extent the change or increase is permitted by a waiver under subsection (b).

"(d) EMERGENCY WAIVER.—Notwithstanding any other provision of this section, the Secretary may, without hearing, temporarily waive the application of subsection (a)(1)(B) if the Secretary finds that a material change or increase is essential in order to respond adequately to (1) an environmental or natural disaster or emergency, or (2) another emergency declared by the President. Any waiver shall be for a period of not to exceed 45 days, except that a waiver may be renewed for 30-day periods if the Secretary finds that adequate capacity continues to be otherwise unavailable.

"(e) ANNUAL REPORT ON WAIVERS.—Each waiver under this section shall require the person who is granted the waiver to submit to the Secretary each year an annual report setting forth for the service authorized by the waiver—

"(1) the ports served during the year;

"(2) the number or frequency of sailings performed during the year; and

"(3) the volume of cargo carried or, for containerized or trailer service, the annual 40-foot equivalent unit shipboard container, trailer, or vehicle capacity utilized during the year, or for tug and barge service, the annual barge house and barge deck capacity utilized during the year.

"(f) DEFINITIONS.—In this section—

"(1) the term 'noncontiguous trade' means trade between—

"(A) a point in the contiguous 48 States; and

"(B) a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle; and

"(2) the term 'related party' means—

"(A) a holding company, subsidiary, affiliate, or associate of a contractor; and

"(B) an officer, director, agency, or other executive of a contractor or of a person referred to in subparagraph (A).

"SEC. 407. OPERATING COMPETING FOREIGN VESSELS.

"(a) IN GENERAL.—Except as provided in this section, a contractor (including a related party with respect to a contractor) may not own, charter, or operate a foreign vessel in competition with a United States documented vessel.

"(b) EXCEPTION.—Subsection (a) does not apply to a foreign vessel if—

"(1)(A) the contractor has applied for an operating agreement for a vessel to be operated in the same service as the foreign vessel; and

"(B) the Secretary, due to the unavailability of funds, does not award an operating agreement to that contractor for a United States documented vessel for that service within 60 days after that application is submitted;

"(2) the Secretary, after notice and an opportunity for a hearing, under special circumstances, and for good cause shown, waives subsection (a) for the contractor for a specified period of time; or

"(3) the foreign vessel was operated by that contractor on August 5, 1993.

"SEC. 408. FUNDING FOR OPERATING AGREEMENTS.

"(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary any amounts necessary to liquidate obligations under operating agreements.

"(b) TRANSFER OF BALANCES FROM OPERATING DIFFERENTIAL SUBSIDY PROGRAM.—Any amounts otherwise available for operating differential subsidy contracts under title VI that are no longer required for those contracts are available, until expended, for operating agreements.

"SEC. 409. DEFINITIONS.

"In this title:

"(1) CONTRACTOR.—The term 'contractor' means an owner or operator of a vessel that enters into an operating agreement for the vessel with the Secretary.

"(2) ELIGIBILITY DECISION APPLICATION.—The term 'eligibility decision application' means an application for a decision by the Secretary under section 403 that a vessel is eligible to be enrolled in the Fleet.

"(3) ELIGIBLE VESSEL.—The term 'eligible vessel' means a vessel that the Secretary decides under section 403 is eligible to be enrolled in the Fleet.

"(4) FLEET.—The term 'Fleet' means the Maritime Security Fleet established under section 402.

"(5) OPERATING AGREEMENT.—The term 'operating agreement' means an operating agreement entered into by the Secretary under section 404.

"(6) RELATED PARTY.—The term 'related party' means, with respect to a contractor or other person—

"(A) a holding company, subsidiary, affiliate, or association of the person; and

"(B) an officer, director, other executive, or agent of the person or of an entity referred to in paragraph (1).

"(7) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

"(8) UNITED STATES DOCUMENTED VESSEL.—The term 'United States documented vessel' means a vessel that is documented under chapter 121 of title 46, United States Code.".

SEC. 4. OPERATING-DIFFERENTIAL SUBSIDY CONTRACTS.

(a) TERMINATION OF EXISTING CONTRACTS.—Notwithstanding any other provision of this Act, any contract in effect under title VI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1171 et seq.), on the day before the date of enactment of this Act shall continue in effect under its terms and terminate as set forth in the contract, unless voluntarily terminated on an earlier date by the persons (other than the United States Government) that are parties to the contract.

(b) AGE ACCELERATION OF BULK CARGO ODS VESSELS.—Section 506 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1156) is amended—

(1) by inserting "(a)" after "SEC. 506."; and

(2) by adding at the end the following new subsection:

"(b) For purposes of this section, any liquid or dry bulk cargo vessel for which operating-differential subsidy is required to be paid under a contract under title VI

that is in force on May 19, 1993, shall, effective upon the termination date of the contract (as set forth in the contract as in effect on May 19, 1993, be deemed to have reached the age of 20 years.".

(c) RESTRICTIONS ON OPERATIONS OF ODS VESSELS.—Title VI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1171 et seq.), as amended by this Act, is further amended by adding at the end the following:

"SEC. 616. LIMITATION ON APPLICATION OF RESTRICTIONS ON OPERATIONS.

"(a) Sections 605(c) and 804, this section, and the essential service requirements in section 601(a) and 603(a), do not apply to a contractor if—

"(1) the contractor submits an eligibility decision application to the Secretary under title IV for all of the vessels operated by the contractor under an operating-differential subsidy contract; and

"(2) all of those vessels for which operating agreements are offered by the Secretary under title IV are enrolled in the Maritime Security Fleet.

"(b)(1) With respect to the operations of a contractor receiving operating-differential subsidy for liner vessels on a particular trade route, as defined in that contractor's contract in effect on January 1, 1993, that operator shall not be subject to the restrictions of either section 605(c) or section 804 with respect to operations on that trade route, commencing at such time as—

"(A) that operator transfers 50 percent or more of its vessels that were operating on that trade route as of January 1, 1993, from the operating-differential subsidy program to the Maritime Security Fleet program under title IV; or

"(B) that operator is the only contractor receiving operating-differential subsidy with respect to that trade route, and all other United States-flag liner operators operating a vessel on that trade route are operating on that trade route only vessels for which there are in effect operating agreements under title IV.

"(2) With respect to any contractor receiving operating-differential subsidy for liner vessels on Maritime Administration Essential Trade Route 1, 2, or 8, that operator shall not be subject to the restrictions of either section 605(c) or section 804 with respect to operations on any of those trade routes, commencing at such time as payments begin to accrue on behalf of another United States-flag operator that is a party to an operating agreement under title IV which provides liner service on Maritime Administration Essential Trade Route 2.".

(d) ELIMINATION OF TRADE ROUTE RESTRICTIONS.—Section 809(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1213(a)) is amended by adding at the end the following: "This subsection shall not apply to contracts under title IV or funds for such contracts.".

SEC. 5. ELIMINATION OF CONSTRUCTION DIFFERENTIAL SUBSIDY RESTRICTIONS.

Title V of the Merchant Marine Act, 1936 (46 App. U.S.C. 1151 et seq.), is amended by adding at the end the following:

"SEC. 512. LIMITATION ON RESTRICTIONS.

"Notwithstanding any other provision of law or contract, all restrictions and requirements under sections 503, 506, and 802 applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.".

SEC. 6. DEFINITIONS APPLICABLE TO MERCHANT MARINE ACT, 1936.

Section 905 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1244), is amended—

(1) by striking subsection (a) and inserting the following:

"(a) Each of the terms 'foreign commerce' and 'foreign trade' mean—

"(1) trade between the United States and a foreign country; or

"(2) trade between foreign ports.";

(2) by striking subsection (c) and inserting the following:

"(c) The term 'citizen of the United States' means a person eligible to own a documented vessel under chapter 121 of title 46, United States Code.", and

(3) by adding at the end the following:

"(h) The term 'foreign subsidized shipyard' means a shipyard that—

"(1) receives or benefits from, directly or indirectly, a shipyard subsidy for the construction of vessels; and

"(2) is located in a foreign country that has not signed a trade agreement with the United States that provides for the elimination of subsidies for that shipyard.

"(i) The term 'subsidy' includes any of the following:

"(1) Officially supported export credits and development assistance.

"(2) Direct official operating support to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including—

"(A) grants;

"(B) loans and loan guarantees other than those available on the commercial market;

"(C) forgiveness of debt;

"(D) equity infusions on terms inconsistent with commercially reasonable investment practices;

"(E) preferential provision of goods and services; and

"(F) public sector ownership of commercial shipyards on terms inconsistent with commercially reasonable investment practices.

"(3) Direct official support for investment in the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including the kinds of support listed in clauses (i) through (v) of subparagraph (B), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.

"(4) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.

"(5) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits, deductions, exemptions and preferences, including accelerated depreciation, if the benefits are not generally available to persons or firms not engaged in shipbuilding or repair.

"(6) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anticompetitive arrangements.

"(7) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance favoring shipowners with an indirect effect on shipbuilding or repair activities, and any assistance provided to suppliers of significant inputs to shipbuilding, which results in benefits to domestic shipbuilders.

"(8) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade or any other export subsidy that may be prohibited as a result of the Uruguay Round of trade negotiations.".

SEC. 7. GOVERNMENT-IMPELLED CARGOES.

(a) VESSELS ELIGIBLE FOR CARGOES.—Section 901(b) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1241(b)) is amended—

(1) in paragraph (1), by striking "For purposes of this section, the term 'privately owned United States-flag commercial vessels'" and all that follows through the end of the paragraph; and

(2) by adding at the end the following new paragraphs:

"(3) In this section and section 901b, the term 'privately owned United States-flag commercial vessel' means a privately owned vessel that is documented under chapter 121 of title 46, United States Code, that—

"(A) was built in the United States;

"(B) was documented under chapter 121 of title 46, United States Code, before May 19, 1993;

"(C) does not transport under section 901b or this section on any voyage more than 12,000 tons of bulk cargo (as defined in section 3 of the Shipping Act of 1984), and—

"(i) was built in a foreign shipyard under a contract entered into on or before May 19, 1993;

"(ii) is built under a contract entered into after that date, in a foreign shipyard that on the date the contract is entered is not a foreign subsidized shipyard; or

"(iii) is subject to an operating agreement under title IV;

"(D)(i) is built under a contract entered into after May 19, 1993, in a foreign shipyard that on the date the contract was entered is not a foreign subsidized shipyard; and

"(ii) has not been documented in a foreign country before it is documented under chapter 121 of title 46, United States Code; or

"(E) has been documented under chapter 121 of title 46, United States Code, for at least 3 consecutive years, did not transport any equipment, materials, or commodities during that period under this section or section 901b, and—

"(i) was built in a foreign shipyard under a contract entered into before May 19, 1993; or

"(ii) is built under a contract entered into after that date, in a foreign shipyard that on the date the contract was entered is not a foreign subsidized shipyard.

"(4) In paragraph (3), the term 'built' includes rebuilt.".

(b) CLERICAL AMENDMENT.—Section 901b of the Merchant Marine Act, 1936 (46 App. U.S.C. 1241f) is amended by adding at the end the following:

"(f) For the definition of the term 'privately owned United States-flag commercial vessel', see section 901(b)(3).".

SEC. 6. VESSEL FINANCING.

(a) ELIMINATION OF MORTGAGEE RESTRICTIONS.—Section 31322(a) of title 46, United States Code, is amended to read as follows:

"(a) A preferred mortgage is a mortgage, whenever made, that—

"(1) includes the whole of the vessel;

"(2) is filed in substantial compliance with section 31321 of this title; and

"(3)(A) covers a documented vessel; or

"(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter.".

(b) ELIMINATION OF TRUSTEE RESTRICTIONS.—

(1) REPEAL.—Section 31328 of title 46, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—Section 31330(b) of title 46, United States Code, is amended in paragraphs (1), (2), and (3) by striking "31328 or" each place it appears.

(c) REMOVAL OF MORTGAGE RESTRICTIONS.—Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), as amended by this Act, is further amended—

(1) in subsection (c)—

(A) by striking "31328" and inserting "12106(e)"; and

(B) in paragraph (1) by striking "mortgage," each place it appears; and

(2) in subsection (d)—

(A) in paragraph (1) by striking "transfer, or mortgage" and inserting "or transfer";

(B) in paragraph (2) by striking "transfers, or mortgages" and inserting "or transfers";

(C) in paragraph (3)(B) by striking "transfers, or mortgages" and inserting "or transfers"; and

(D) in paragraph (4) by striking "transfers, or mortgages" and inserting "or transfers".

(d) LEASE FINANCING.—Section 12106 of title 46, United States Code, is amended by adding at the end the following new subsections:

"(e)(1) A certificate of documentation for a vessel may be endorsed with a coastwise endorsement if—

"(A) the vessel is eligible for documentation under section 12102;

"(B) the vessel is otherwise qualified under this section to be employed in the coastwise trade;

"(C) the person that owns the vessel, or any other person that owns or controls the person that owns the vessel, is primarily engaged in leasing or other financing transactions;

"(D) the vessel is under a demise charter to a person qualifying as a citizen of the United States for engaging in the coastwise trade under section 2 of the Shipping Act, 1916; and

"(E) the demise charter is for—

"(i) a period of at least 3 years; or

"(ii) such shorter period as may be prescribed by the Secretary.

"(2) On termination of a demise charter required under paragraph (1)(D), the coastwise endorsement may be continued for a period not to exceed 6 months on any terms and conditions that the Secretary of Transportation may prescribe.

"(f) For purposes of the first proviso of section 27 of the Merchant Marine Act, 1920, section 2 of the Shipping Act, 1916, and section 12102(a), a vessel meeting the criteria of subsection (d) or (e) is deemed to be owned exclusively by citizens of the United States.".

SEC. 9. PLACEMENT OF VESSELS UNDER FOREIGN REGISTRY.

(a) IN GENERAL.—Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), as amended by this Act, is further amended by adding at the end the following:

"(e) Notwithstanding subsection (c)(2), the Merchant Marine Act, 1936, or any contract entered into with the Secretary under that Act, a vessel may be placed under a foreign registry, without approval of the Secretary, if—

"(1)(A) the Secretary determines that at least one replacement vessel of a capacity that is equivalent or greater, as measured by deadweight tons, gross tons, or container equivalent units, as appropriate, is documented under chapter 121 of title 46, United States Code, by the owner of the vessel placed under the foreign registry; and

"(B) the replacement vessel is not more than 10 years of age on the date of that documentation;

"(2)(A) the owner of the vessel has applied for an operating agreement under title IV of the Merchant Marine Act, 1936; and

"(B) the Secretary, due to the unavailability of funds, has not awarded that owner an operating agreement within 60 days after the date of that application; or

"(3)(A) before the expiration of an operating agreement entered into under title IV of the Merchant Marine Act, 1936, the owner has applied for a new operating agreement; and

"(B) the Secretary, due to the unavailability of funds, has not awarded the owner an operating agreement before the later of—

"(i) 60 days after the application for a new operating agreement; or

"(ii) the date of expiration of the operating agreement.

"(f) The Secretary shall give notice and an opportunity for a hearing for all approvals applied for under subsection (c)(2) for oceangoing merchant vessels that are of at least 3,000 gross tons.".

(b) APPLICATION.—The amendment made by subsection (a) applies to vessels that are placed under foreign registry after the date of enactment of this Act and replacement vessels documented in the United States after that date.

(c) COURT SALES OF VESSELS.—Section 31329 of title 46, United States Code, is amended to read as follows:

"§ 31329. Court sales of documented vessels

"When a documented vessel is sold by order of a district court to a mortgagee not eligible to own a documented vessel—

"(1) that sale is not a sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883); and

"(2) unless the vessel is transferred to a foreign registry, the vessel may be operated only with the approval of the Secretary of Transportation.".

SEC. 10. SERIES CONSTRUCTION ASSISTANCE.

The Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.) is amended by adding at the end the following:

"TITLE XIV—SERIES CONSTRUCTION ASSISTANCE

"SEC. 1401. PAYMENT OF ASSISTANCE AUTHORIZED.

"(a) IN GENERAL.—The Secretary of Transportation (hereinafter in this title referred to as the 'Secretary') may, subject to the availability of appropriations, pay assistance in accordance with this title to the owner of a shipyard that is located in the United States for the construction (including outfitting and equipping) of any commercial vessel that is one of a series of vessels for which payment of assistance under this section to the owner is approved by the Secretary under section 1402.

"(b) AMOUNT OF ASSISTANCE.—The total amount of assistance paid under this section with respect to a vessel shall be equal to the series transition payment determined for the vessel under section 1403(a).

"SEC. 1402. APPROVAL OF ASSISTANCE FOR CONSTRUCTION OF SERIES OF VESSELS.

"(a) APPROVAL OF ASSISTANCE.—

"(1) IN GENERAL.—The Secretary may approve payment of assistance under section 1401 for construction of a series of vessels in a shipyard if—

"(A) the owner of the shipyard submits an application for that assistance in accordance with section 1405;

"(B) the Secretary makes the determinations described in subsection (b); and

"(C) the Secretary determines that payment of the assistance will contribute to maintaining national vessel construction capabilities that are essential in time of war or national emergency.

"(2) LIMITATION.—The Secretary may not approve assistance under this section for a series of vessels if the series transition payment determined under section 1403(a) for any vessel in the series is greater than 50 percent of the estimate of the cost of constructing the vessel determined by the Secretary under section 1403(b)(2).

"(b) DETERMINATIONS BY SECRETARY.—The Secretary may not approve assistance for construction of a series of vessels in a shipyard unless the Secretary has determined the following:

"(1) VESSEL REQUIREMENTS.—The vessels are—

"(A) commercial vessels of at least 10,000 gross tons; and

"(B) commercially marketable on the international market.

"(2) SHIPYARD REQUIREMENTS.—The shipyard in which the vessels will be constructed—

"(A) is located in the United States; and

"(B) upon completion of construction of the vessels, will be capable of constructing additional vessels of the same type as those in the series for a price that is competitive in the international market.

"(3) APPLICANT REQUIREMENTS.—The applicant for the assistance—

"(A) has the ability, financial resources, and other qualifications necessary for construction of the vessels;

"(B) has entered into a contract for the construction of each of the first 2 vessels to be constructed in the series, which may include a contract for a vessel that will be constructed without assistance under this title; and

"(C) is the owner of the shipyard in which the vessels will be constructed.

"(4) CONTRACT REQUIREMENTS.—Each of the contracts required under paragraph (3)(B) are binding obligations on the applicant and all other parties to the contracts, except that such a contract may be contingent on—

"(A) the approval of assistance under this title for construction of a vessel under the contract; and

"(B) the making of a guarantee or commitment to guarantee obligations under title XI for construction under the contract.

"(5) PURCHASER REQUIREMENTS.—Each person that is a purchaser of a vessel under a contract required under paragraph (3)(B)—

"(A) has the ability, financial resources, and other qualifications necessary to own and operate the vessel in commercial service; and

"(B) is a party to the contract.

"(6) SERIES TRANSITION PAYMENT.—The series transition payment under section 1403 for each vessel in the series.

"(c) PRIORITY FOR CERTAIN SERIES OF VESSELS.—In approving assistance under this title, the Secretary may give priority to a series of vessels—

"(1) if a smaller number of vessel in the series are required to be constructed with assistance before construction of that type of vessel becomes cost effective;

"(2) for which the total of the series transition payments determined under section 1403 for all vessels in the series is less than that total for other series of vessels for which applications are submitted for assistance under this title;

"(3) that will be constructed in a shipyard with respect to which assistance under this title has not been provided; or

"(4) that would contribute to the preservation of a shipyard that would be essential in a time of war or national emergency.

"SEC. 1403. DETERMINATION OF SERIES TRANSITION PAYMENTS.

"(a) IN GENERAL.—The Secretary shall determine the series transition payment for each vessel in a series of vessels for which an application for assistance under this title is received by the Secretary.

"(b) AMOUNT OF SERIES TRANSITION PAYMENT.—The series transition payment for a vessel under subsection (a) is equal to the difference of—

"(1) the estimated cost of completing construction of the vessel, as included in the application for assistance submitted under section 1405; minus

"(2) a reasonable estimate of the cost of constructing the vessel under similar plans and specifications in a foreign shipyard that is considered by the Secretary to be a fair and representative example for purposes of determining the payment.

"SEC. 1404. SERIES CONSTRUCTION AGREEMENT.

"(a) IN GENERAL.—

"(1) IN GENERAL.—The Secretary shall, for each series of vessels for which assistance is approved under section 1402, enter into a series construction agreement with the owner of the shipyard in which the series of vessels will be constructed, under which the Secretary is required to pay the owner assistance in accordance with a schedule established under paragraph (2).

"(2) SCHEDULE FOR PAYMENTS.—An agreement under this subsection shall establish a schedule for the payment of assistance under the agreement, that is based on the construction schedule for vessels for which the assistance is paid.

"(3) TERMINATION OF AGREEMENT.—An agreement under this subsection shall authorize the Secretary to terminate the agreement if—

"(A) a contract required under section 1402(b)(3)(B) is terminated by the purchaser of the vessel under the contract, and the owner of the shipyard does not enter into a new contract for construction of the vessel within a period which shall be specified in the agreement; or

"(B) the owner of the shipyard fails to enter into contracts for construction of all vessels in the series of vessels to which the agreement applies, within a period which shall be specified in the agreement.

"(4) CONTINUING EFFECT OF AGREEMENT WITH RESPECT TO VESSELS COVERED BY CONTRACTS.—The termination of a series construction agreement under paragraph (3) shall not affect the effectiveness of the agreement with respect to vessels for which a construction contract is in effect on the date of termination.

"(b) BINDING OBLIGATION OF THE UNITED STATES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a requirement that the Secretary make payments under a series construction agreement under subsection (a) shall constitute a binding obligation of the United States.

"(2) TERMINATION OF OBLIGATION.—If the Secretary terminates a series construction agreement pursuant to subsection (a)(3), the obligation of the United States under paragraph (1) to make payments under the agreement shall terminate with respect to vessels for which no construction contract is in effect on the date of termination of the agreement.

"(3) CONTINUING AVAILABILITY OF AMOUNTS.—Amounts to be used to liquidate an obligation under paragraph (1) that terminates under paragraph (2) shall remain available to the Secretary for the payment of assistance under this title.

"SEC. 1405. APPLICATIONS FOR ASSISTANCE.

"(a) SUBMITTAL.—A person desiring assistance under this title shall, in accordance with this section, submit an application to the Secretary.

"(b) CONTENTS OF APPLICATION.—An application for assistance under this title with respect to a series of vessels shall include the following:

"(1) A detailed description of the type of vessels included in the series, including plans and specifications for the vessels.

"(2) Detailed estimates of the cost of completing construction of each of the vessels in the series, including such estimates from subcontractors for the construction as may bo required by the Secretary.

"(3) Copies of the contracts required under section 1402(b)(3)(B).

"(4) Other information required by the Secretary to fulfill the requirements of this title.

"(c) REGULATIONS.—The Secretary shall issue regulations setting forth the procedures for submitting an application for assistance under this title.

"SEC. 1406. RESTRICTION ON VESSEL OPERATIONS.

"A vessel for which assistance is paid under this title—

"(1) may be operated only in foreign trade or domestic trade authorized under a registry endorsement for the vessel issued under section 12105 of title 46, United States Code; and

"(2) may not be operated in the coastwise trade of the United States (including mixed coastwise and foreign trade), except coastwise trade authorized under a registry endorsement for the vessel issued under section 12105 of title 46, United States Code.

"SEC. 1407. VESSEL DESIGN AWARDS.

"The Secretary, subject to the availability of appropriations, may make an award to a United States shipyard on an equal matching basis for the cost of vessel designs and document and bid preparation for vessels described in section 403(b)(4).".

SEC. 11. EFFECTIVE DATE.

The amendments made by this Act are effective on the date which is 120 days after the date of enactment of this Act.

SEC. 12. REGULATIONS.

(a) IN GENERAL.—The Secretary of Transportation shall prescribe regulations as necessary to carry out this Act.

(b) INTERIM REGULATIONS.—The Secretary of Transportation may prescribe interim regulations necessary to carry out this Act and for accepting eligibility decision applications under section 403 of the Merchant Marine Act, 1936, as amended by this Act. For this purpose, the Secretary of Transportation is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All regulations prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire 270 days after the date of enactment of this Act.

SEC. 13. EXPANSION OF STANDING FOR MARITIME UNIONS.

Section 301 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1131) is amended by adding at the end the following:

"(c) STANDING FOR MARITIME UNION REPRESENTATIVES.—The duly-elected representative of any organization that is certified by the Secretary of Labor as the proper collective bargaining agency for officers or crew employed on any type of United States documented vessel is an interested party in, and has standing to challenge, any proposed or final order, action, or rule of the Secretary of Transportation under this Act or section 9(c)(2) of the Shipping Act, 1916.".

SEC. 14. STUDY.

(a) IN GENERAL.—After providing public notice and opportunity for comment, the Secretary of Transportation shall conduct a study of—

(1) the impact of this Act on the international competitiveness of United States documented vessels and whether this Act has had a favorable or unfavorable impact on the ability of United States documented vessels to compete successfully with foreign-flag vessels;

(2) whether continuation of the Maritime Security Fleet program established by this Act would assist the international competitiveness of United States documented vessels;

(3) whether the Maritime Security Fleet program should be continued, modified, or discontinued;

(4) alternatives that are or should be available to operators of United States documented vessels if the Maritime Security Fleet program is discontinued; and

(5) any other issues related to promoting the international competitiveness of United States documented vessels that the Secretary considers appropriate.

(b) REPORT.—The Secretary of Transportation shall submit to the Congress a report on the findings and conclusions of the study required by subsection (a) by not later than 4 years after the date of enactment of this Act, which shall include such recommendations as the Secretary considers appropriate.

SEC. 15. CARGO PREFERENCE ADMINISTRATIVE REFORM.

(a) FINDINGS.—The Congress finds and declares that—

(1) the Congress continues to support the cargo preference program as an important element of support for the United States-flag merchant marine because the United States merchant marine is critical to the economic and national security of the United States;

(2) reserving a small portion of Government cargo for United States-flag vessels encourages competition among United States-flag vessels; and

(3) administering the cargo preference program in a centralized, commercially based manner reduces costs of the program.

(b) ADMINISTRATIVE REFORM.—Section 901 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1241) is amended by adding at the end the following new subsections:

"(d) A privately owned United States-flag commercial vessel transporting any equipment, materials, or commodities under this section or section 901b shall be engaged under terms no less favorable than the most favorable terms offered to any foreign-flag vessel transporting equipment, materials, or commodities under this section or section 901b.

"(e) A contract for the ocean transportation of any equipment, materials, or commodities under this section or section 901b, to the extent the Secretary of Transportation determines necessary to further the purposes of this section and section 901b, shall be based on contracts used for commercial shipments.

"(f) The Secretary of Transportation shall participate in negotiations relating to agreements with recipient countries for equipment, materials, or commodities subject to this section or section 901b to the extent the Secretary considers to be necessary to ensure agreement provisions relating to or affecting the transportation of such equipment, materials, or commodities permit fair and reasonable transportation services to be provided.

"(g) No later than 180 days after the date of the enactment of the Maritime Security and Competitiveness Act of 1993, the heads of appropriate Federal agencies, or their representatives, shall transmit to the Secretary of Transportation recommendations relating to the methodology used by the Secretary of Transportation to determine whether rates for United States-flag vessels are fair and reasonable in compliance with section 901(b) and will achieve the policy objectives of this Act.".

SEC. 18. WAGES FOR WHICH PREFERRED MARITIME LIEN MAY BE ESTABLISHED.

(a) IN GENERAL.—Section 31301(5)(D) of title 46, United States Code, is amended by inserting before the semicolon the following: "(including any payment described in paragraph (5), (6), (7), (8), or (9) of section 302(c) of the Labor Management Relations Act, 1947 for any individual as a member of the crew of the vessel, that is due from and unpaid by an owner or managing operator of the vessel)".

(b) INCURRING OBLIGATIONS BEFORE EXECUTING PREFERRED MORTGAGES.—Section 31323(b)(2) of title 46, United States Code, is amended by inserting before the semicolon the following: "(including any payment described in paragraph (5), (6), (7), (8), or (9) of section 302(c) of the Labor Management Relations Act, 1947 for any member of the crew of the vessel)".

(c) MASTER'S LIEN FOR WAGES.—Section 11112 of title 46, United States Code, is amended by inserting after "wages" the following: "(including any payment described in paragraph (5), (6), (7), (8), or (9) of section 302(c) of the Labor Management Relations Act, 1947 for an individual as master of the vessel, that is due from and unpaid by an owner or managing operator of the vessel)".

(d) APPLICATION.—The amendments made by subsections (a), (b), and (c) shall apply with respect to payments that first become due on or after the date of the enactment of this Act.

PURPOSE OF THE BILL

Absent a major effort by the Federal government, this nation will soon have no U.S.-flag ships engaged in international commerce and will witness the extinction of the U.S. shipbuilding industry.

If this occurs—

(1) our military will not have the U.S.-flag vessels it needs to meet sustainment sealift requirements;

(2) our inactive surge sealift fleet will be inoperable due to a lack of trained merchant seamen;

(3) foreign shipowners will control the price of U.S. exports and imports and, therefore, the competitiveness of American industries in the international marketplace; and

(4) our nation will have lost the skills, infrastructure and allied industries necessary to build ships for the U.S. Navy when needed.

To reverse the decline of the U.S. maritime industry, the Committee urges the adoption of H.R. 2151. This legislation has two purposes: the continuation of an ocean-going, commercially viable U.S.-flag, U.S. crewed merchant marine to protect the defense and economic security of the United States and the retention of a skilled and profitable U.S. shipbuilding industry.

BACKGROUND AND NEED FOR LEGISLATION

U.S.-FLAG INDUSTRY

On March 4, 1935, President Franklin Delano Roosevelt presented to Congress the issue of whether the United States should

have an adequate merchant marine (H. Doc. No. 118, 74th Congress). The President's own position was unequivocal. He said:

> To me there are three reasons for answering the question in the affirmative. The first is that in time of peace, subsidies granted by other nations, shipping combines, and other restrictive or rebating methods may well be used to the detriment of American shippers. The maintenance of fair competition alone calls for American-flag ships of sufficient tonnage to carry a reasonable portion of our foreign commerce.
>
> Second, in the event of a major war in which the United States is not involved, our commerce, in the absence of an adequate merchant marine, might find itself seriously crippled because of its inability to secure bottoms for neutral, peaceful foreign trade.
>
> Third, in the event of war in which the United States itself might be engaged, American-flag ships are obviously needed for naval auxiliaries but also for the maintenance of reasonable and commercial intercourse with other nations. We should remember lessons learned in the last war.

The Congress shared President Roosevelt's belief in the need for a U.S. maritime presence and in response, enacted the Merchant Marine Act, 1936.

The Committee report accompanying that legislation stated: "We are asking for no monopoly in world transportation by water. We desire only to secure that place in ocean transportation which is necessary for our national defense and for the proper promotion and development of our foreign trade."

Nearly 60 years later, as our nation again engages in a debate over the future of the merchant marine, the reasoning of Roosevelt and the 1936 Congress still rings true. As the last remaining superpower, the United States must never trust our economic or our national security to the whim of foreign ships.

Operation Desert Shield/Desert Storm proved the importance of sealift. Fast sealift ships, the Ready Reserve Force (RRF) and commercial vessels carried 95 percent of all cargo transported to the Persian Gulf.

What was also proved, was the hazard of relying on foreign-crewed ships. For instance, during DESERT STORM a U.S.-flag vessel owner had trouble enforcing a transshipment contract for the delivery of military goods on foreign flag vessels. The crew of the *Eagle Nova*, a German-registered ship, simply refused to fulfill its contract with American President Lines (APL) to transport military cargo through the Persian Gulf. APL then had to arrange to have the cargo transported on a U.S.-flag vessel in order to meet its contractual obligations to the Military Sealift Command.

If the United States does not maintain its U.S.-flag fleet, its ability to support overseas military operations fully may be compromised by the inability to charter foreign-flag vessels to go into dangerous war zones.

Military sealift has two components: surge, and sustainment. Surge sealift is used for the initial 30 day rapid deployment of unit

equipment and military personnel. Surge sealift requirements are met through the use of the fast sealift vessels, principally the SL-7's, and through activation of specific vessels located in the RRF. While the fast sealift vessels are fully manned, 365 days a year, the RRF vessels have at most only 10 crew members, most have only two crew members. To deploy within the 5 to 10 days required by the mobility requirements, a substantial number of mariners must be activated from the existing U.S.-flag commercial fleets.

Over 3,000 civilian mariners were required by Operation Desert Shield/Desert Storm. However, despite their best efforts, U.S. maritime labor unions were not able to meet this massive call for mariners from their active membership.

Since 1965, the number of jobs on privately-owned, oceangoing U.S.-flag vessels of 1,000 gross tons and over has dropped from 50,986 to 9,165, as of December 31, 1992. Of these, 3,331 were licensed officers and 5,834 were unlicensed seamen.

In 1992, the Defense Policy Coordinating Committee reported that "[t]he Department [of Defense] needs well-trained and reliable crews for both government-owned and commercial ships and depends on the U.S. commercial fleet to provide these crews for government-owned ships." Failure to maintain this base of trained seamen raises serious questions about our ability to activate surge sealift vessels in time of war or national emergency. The following chart demonstrates the reduction in the number of billets on U.S.-flag vessels since 1965:

Sustainment sealift is the supply and resupply of our military forces in a forward position. Many of these goods including ammunition, food, and medical supplies, are transported in containers, a technology pioneered and perfected by U.S.-flag shipping companies. The intermodal nature of U.S. carriers makes this type of

logistical support readily achievable through the use of their commercial land/water transportation systems.

This fact was recognized by Andrew H. Card, then Secretary of Transportation, when he testified before the Committee on July 8, 1992, that "the review of defense-related sealift requirements concluded that if U.S.-flag containership operators dispose of their U.S.-flag fleets, as two major foreign trade operators indicated that they would absent changes in U.S. maritime policy, the U.S.-flag dry-cargo fleet would be inadequate in 1999 to meet Defense sealift requirements." (See Printed Hearing 102–102.)

The linkage between the U.S. maritime industry and military requirements was also documented by the Commission on Merchant Marine and Defense established in 1984 by Public Law 98–525. The purpose of this Commission was to "study problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the United States merchant marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base of the United States to meet the needs of naval and merchant ship construction in time of war or national emergency."

The Commission issued a series of reports in 1987 and 1988 concerning the maritime industry. Among the Commission's findings was this: "The Commission's analysis, along with the latest studies conducted in the 1980s by the Department of Defense and other agencies, has verified that the long-standing problems of the United States flag shipping, and shipbuilding and repair industries have adversely affected the national security capabilities of the United States."

The importance of a U.S.-flag fleet to protect our economic interest in international commerce is equally well-established. The report of the 1934 Executive Branch interdepartmental committee known as the "Committee on Shipping Policy" stated:

> The American exporter is interested in the merchant marine to the extent that it enables him to compete with his foreign competitor. In order to sell his products at satisfactory prices he must not be required to pay too high rates. He also seeks to reach a competitive position with exporters from third countries in common markets. Further, he is interested in having regularity of sailings so that he can plan to meet the requirements of his foreign customer. In the case of perishable commodities such as fruits, vegetables, and meat products, he also requires proper control of the temperature conditions during transportation as well as speed of delivery. If he receives better services in these respects from foreign ship operators, he is not likely to support effectively the American ship-operating company. The American exporter also desires to be protected against discriminatory practices either or competing American exporters or shipping companies, or practices by foreign lines. In case rebates are granted, he also insists that his competitors shall not be favorod in this respect. In the service which the American exporter required, consideration should be given to storage, protection against damage from other cargoes, and such other safe-

guards as may be required with respect to various types of commodities. In the movement of such cargoes as cotton, lumber, phosphate, coal, and other bulk commodities, the exporter is primarily interested in obtaining low rates, because in these instances the speed of delivery and other considerations, important with respect to other commodities are of no particular advantage.

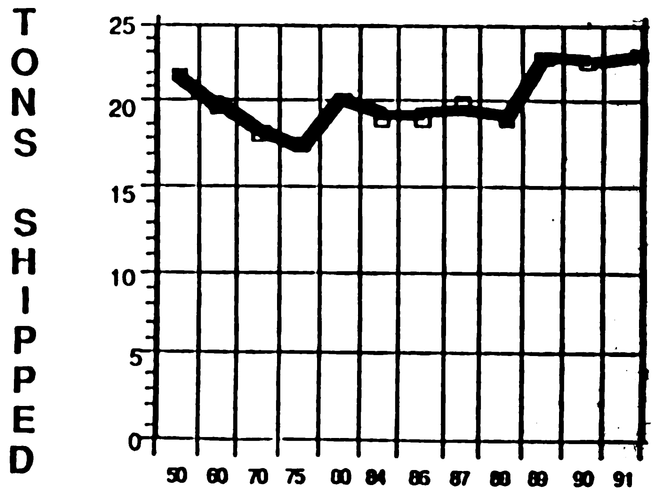
In addition, the Committee report on the Merchant Marine Act, 1936 stated: "American ships serve to stabilize rates in the transportation of cargoes. It has been estimated that the possession of American ships after the World War protected the American people from exorbitant rates over which they would have had no control if there had not been American operators in trade conferences and American ships to secure reasonable rates."

The Committee believes that these basic concepts in international shipping economics are as valid today as they were in 1936. Without at least some U.S.-flag vessels to ensure fair and balanced competition, foreign carriers would be able to exert control over the price of U.S. imports and exports. Were it in the interest of these foreign-ship owners to drive up the costs of U.S. exports to eliminate competition, they would do so.

In 1948, there were 716 vessels under the U.S. flag. As of December 31, 1992, there were only 151 privately-owned vessels over 1,000 tons active in the U.S.-flag fleet engaged in the U.S. foreign commerce or in foreign-to-foreign trade. This included 17 general cargo vessels, 78 container ships, 13 bulk carriers, and 43 tankers, but no passenger vessels. The following chart shows the decline in the number of U.S.-flag vessels since 1948:

While the number of vessels under the U.S.-flag and the number of jobs on those vessels have decreased dramatically over the past 2 decades, U.S.-flag carriers have actually become more efficient

over this period and are moving more cargo than ever before. For example, in 1950, it took 681 ships to move 21.5 million tons of cargo. In 1992, it took only 189 ships to move 24.6 million tons of cargo. The following chart shows the increase in the number of tons shipped on U.S.-flag vessels from 1950 to 1991:



But no matter how efficient they become, to compete internationally, U.S. shipowners must have equivalent capital costs, operating costs, and tax liabilities as foreign-flag carriers.

Unfortunately, this is not the case. Compliance with the mandates of federal laws results in higher operating costs for U.S.-flag carriers. For example, federal law requires all licensed and unlicensed seamen on a U.S.-flag vessel to be U.S. citizens or permanent resident aliens. Ships registered in Liberia, Panama, or the Marshall Islands have no such requirement and employ low-cost seamen—who make as little as $350 per month—from countries such as Bangaladesh or the Philippines. Thus, foreign owners realize immediate and substantial savings by avoiding the higher wages earned by U.S. seamen.

The United States is not the only victim of this conundrum. The cost of operating a vessel under the flag of any developed nation is significantly higher than it would be for the same vessel flagged in a country with a low standard of living.

To offset the higher cost of operating under the U.S.-flag, the Merchant Marine Act, 1936, created the Operating Differential Subsidy (ODS) program through which payments are made to U.S. carriers on specified trade routes.

ODS contracts are beginning to expire in 1995, and over 90% will have expired by 1998. Coupled with the age and inefficiencies of the existing fleet, our carriers must make reflagging and fleet replacement decisions well before 1997. Without the continued availability of a way to offset labor costs, corporations owning U.S.-flag

vessels are expected to register their ships in a foreign country to avoid the application of higher-cost U.S. law. Two companies, Sea-Land and American President Lines, have already announced their intention to do so. These corporations have a fiduciary obligation to their stockholders to look out for their best investment interests. However, the Committee believes that it is in the best interests of the United States and its taxpayers to retain these vessels under the U.S. flag. It is, therefore, the responsibility of the U.S. government to provide—as do many nations—adequate financial incentives to vessel owners to build and register their vessels in the United States. This is one of the primary purposes of H.R. 2151.

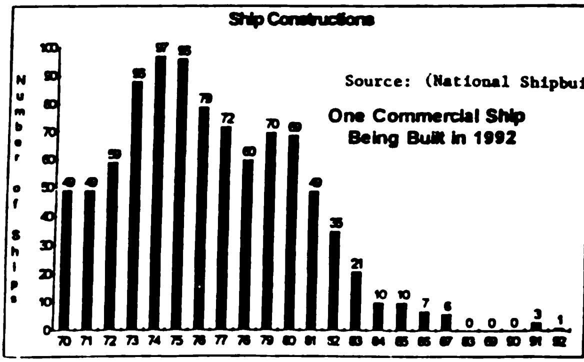
U.S. SHIPYARD INDUSTRY

The Commission on Merchant Marine and Defense, cited earlier, also recommended that Congress implement a national program for commercial ship construction in United States shipyards. The purpose of this program would be to ensure an adequate shipbuilding mobilization base, including shipyard facilities and a sufficient cadre of skilled shipyard workers and ship designers; ensure adequate manufacturing and supply of key shipbuilding components, systems, and equipment; increase both the number and quality of ships with specific utility for strategic sealift; and provide modern, efficient ships for charter to commercial operators at economically competitive rates.

The Commission also estimated that "each merchant ship constructed in the United States generates, on the average, $151 million in increased Gross National Product, $34 million in local, state, and federal taxes, and 421 shipyard production jobs and 1,986 jobs annually during the two year ship construction period."

Notwithstanding the Commission's recommendations, a shipyard promotional program is still not in place, and in fact, the substantial decline in the U.S. shipbuilding industry continues. There are a number of causes for this decline, but the most direct and immediate can be traced to the elimination of the Construction-Differential Subsidy (CDS) program in 1981.

The CDS program paid a subsidy to U.S.-flag shipowners to allow them to buy vessels from U.S. shipyards at prices comparable to the world market. The chart below clearly indicates the dramatic effect the elimination of CDS had on commercial shipbuilding in the United States. Between 1984 and 1990, U.S. shipbuilders actually received no new commercial orders for ships 1,000 gross tons and over. During roughly this same period, commercial orders in the international market were steadily increasing.



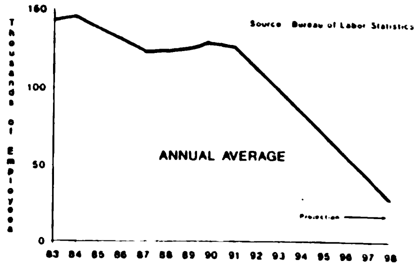
Source: (National Shipbuilding Initiative - 1/93)

As of September 1, 1993, there was only one privately-owned vessel of over 1,000 gross tons under construction in a U.S. shipyard. This vessel, a 398-foot sulfur carrier is being built for the coastwise trade.

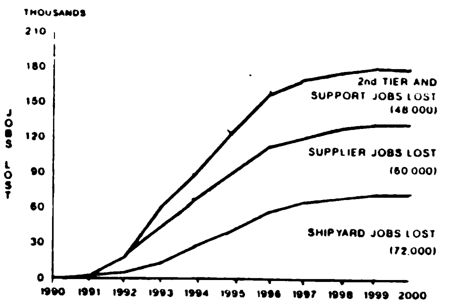
With minimal commercial construction in U.S. shipyards and the decrease in U.S. Navy contracts, it has been estimated that over 180,000 jobs will be lost in the U.S. shipbuilding, ship repair, and marine equipment manufacturing industries within the next six years.

Additionally, it has been estimated that for every 100 shipyard jobs lost, another 72 jobs in the region disappear. Eighteen of these positions are at shipyard supply companies, and 54 are attributable to purchases that are no longer made by shipyard employees. The following chart shows the decline in U.S. shipyard employment in the United States since 1983 and projected through the end of this decade:

DECLINE IN TOTAL EMPLOYMENT AT U.S. PRIVATE SHIPYARDS



TOTAL JOBS LOST FROM U.S. SHIPYARD/SHIPYARD SUPPLIER BASE, 1990-2000



While the U.S. terminated its construction subsidy program in 1981, foreign governments were implementing a vast array of direct and indirect subsidies. The following chart summarizes the subsidies granted in major shipbuilding countries since 1988:

AVERAGE ANNUAL SHIPBUILDING AID BUDGETS OF TOP SUBSIDIZING OECD NATIONS SINCE 1988

Country	Ship Financing		Direct Yard Aid			R&D	Annual Average*
	Loans, Subsidized Interest	Guarantees	Contract Grants	Shipyard Capital*	Yard Loans, Interest Sub.		
S. KOREA	YES $1.8b	YES	Unknown	YES	YES $595m	YES	$2.4B
GERMANY	YES $1.5b	YES	YES $353m	YES $463m	YES Amt unknwn	YES	$2.3B
JAPAN	YES $818m	YES	SOME	YES $85m	YES	YES $1b	$1.9B
ITALY	YES $887m	Unknown	YES $175m	YES $184m	Unknown	YES $24m	$940M
SPAIN	YES $306m	YES	YES $153.5m	YES $438.2m	YES	YES	$897M
FRANCE	YES $399m	YES	YES $149m	YES $83m	Unknown	YES $3m	$634M

*Excludes sums and subsidy values of government guarantees

Source: Shipbuilders Council of American, 1993

It is clear that the inhibiting factor for U.S. shipyards is not high labor rates, lack of technology, or lack of adequate facilities: it is

market access. In the Committee's view, U.S. shipyards have been affected not only by foreign government subsidies but also the "learning curve" advantage now enjoyed by foreign shipyards as a result of having the market to themselves for over a decade.

Foreign government subsidies to their shipyards, both direct and indirect, run as high as 25–30% of costs. U.S. shipyards can successfully compete against a foreign company, but not one subsidized by its government.

In June 1989, the Shipbuilders Council of America, seeking action against the shipbuilding subsidies of Japan, South Korea, Germany, and Norway, filed an unfair trade petition under Section 301 of the 1974 Trade Act. The U.S. Trade Representative (USTR), however, offered to initiate international negotiations in an attempt to end the shipbuilding subsidies of these nations, and the Shipbuilders Council agreed to withdraw its petition temporarily.

The USTR subsequently entered into multilateral negotiations under the sponsorship of the international Organization for Economic Cooperation and Development (OECD). All established deadlines for reaching an agreement were missed, and in April 1992, the USTR announced that negotiations had been suspended indefinitely.

While the Committee continues to favor resolution of the foreign subsidy issue through international negotiations, it cannot continue to allow foreign subsidized shipyards to garner an ever increasing share of the world market.

Although negotiations will likely begin again in October 1993, the Committee believes that the successful conclusion of an international agreement will not in and of itself allow U.S. shipyards to become price competitive overnight. A ten year monopoly on commercial shipbuilding cannot simply be overcome because foreign governments suddenly agree to end their subsidization.

A key to successful and profitable shipbuilding is the "learning curve" phenomenon which flows from building ships of the same type in a series. Typically, the learning curve cost savings over the first 4–5 ships in a series, before it flattens out, is in the 20–25% range. The savings in man-hours between the first ship in a series and later ships is well documented. In a recent paper presented to the Society of Naval Architects and Marine Engineers (SNAME) in New York, Dr. Lloyd Bergeson analyzed man-hour data compiled from 15 shipyards that were dedicated to the construction of Liberty ships in World War II.[1]

The average man-hours per ship for all fifteen shipyards for the first ship in the series was 1,120,000. The second ship averaged 975,000 man-hours, the fourth 725,000 man-hours, the eighth 590,000 man-hours and the sixteenth 450,000. Savings between the first and the sixteenth vessels in the series represented almost 700,000 man-hours.

In a 1986 study comparing the construction, planning, and manpower schedules for production of general mobilization ships at Avondale Shipyards, New Orleans, Louisiana, and at Kawasaki

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[1] Bergeson, Lloyd, "Shipbuilding and Shipbuilding Management, 1943–1993", SNAME, New York, September 1993.

Shipyards, Kobe, Japan, similar findings were obtained.[2] The first ship's budget at Avondale was estimated at 1.834 million man-hours. The budget for the fifth ship at Avondale was 1.235 million man-hours. When only the engineering, planning and mold loft activities were considered, Avondale needed only 18% of the man-hours on the second ship as were necessary for the first. When hull activities were included, the budget for the second ship was 76% of that required for the first ship.

The author of the U.S.-Japan study also concluded that the Japanese comparative performance advantage was "traceable to the fact the Japanese yards have developed concepts of standardization and modularization that permit a large portion of the design and engineering activities to be essentially the retrieval of the documentation from files."

Standardization of designs and overcoming the learning curve are the twin goals of the series transition program contained in H.R. 2151. The Committee believes that without legislative action in this Congress, the decline in shipbuilding jobs will continue at an even more dramatic note. The program contained in H.R. 2401, the FY94 Defense Authorization bill, and in this bill can, if fully funded and implemented properly, stem these declines.

DISCUSSION

MARITIME SECURITY FLEET PAYMENT PROGRAM

Under amendments to the 1936 Act made by the Merchant Marine Act of 1970, ODS payments are based on the wage difference between the U.S. collective bargaining rate and the amount paid to foreign seamen on vessels in direct competition. This subsidy can amount to as much as $5.2 million per vessel. Some have maintained that this system does not provide sufficient incentives for U.S.-flag vessels to become more efficient.

In contrast, the new Maritime Security Fleet (MSF) program envisioned by H.R. 2151 pays eligible vessel owners $2.3 million in FY 1994 and $2.1 million for each subsequent year of a ten-year contract. To be able to operate competitively with this differential, U.S.-flag vessels must become even more efficient than they have over the last decade by implementing new commercial operational practices and reduced manning costs. In addition, revised Coast Guard inspection and other required safety procedures could reduce some cost burdens without reducing overall safety.

Under the Merchant Marine Act, 1936, only U.S.-built vessels are eligible for ODS. The 1936 Act sought to offset the higher cost of this requirement through the Construction-Differential Subsidy (CDS) program. As was previously noted, funding for the CDS program was eliminated in 1981, but U.S.-flag carriers are still required to buy their vessels from a U.S. shipyard to be eligible for ODS. U.S.-flag vessel owners found themselves in a no-win situation; to have higher operating costs paid by ODS, they had to incur higher capital costs to buy U.S.-built vessels without CDS. The re-

[2] Bunch, Howard McRaven. Comparison of the Construction Planning and Manpower Schedules for Building the PD 214. "General mobilization ship in a U.S. shipyard and in a Japanese shipyard", presented at the Ship Production Symposium, Williamsburg, Virginia, August 1986.

sponse of many U.S. carriers was to begin replacing U.S.-flag vessels with foreign-built, foreign-flag, vessels whenever they could.

H.R. 2151 attempts to strike a balance between the interests of operators and shipyards by creating a linkage between the Maritime Security Fleet program and a new Series Transition Payment (STP) Program.

SERIES TRANSITION PAYMENT PROGRAM

The STP Program established by this bill would provide financial aid to U.S. shipyards to build multiple competitively priced, commercial vessels for international service. In simple terms, it would allow U.S. shipyards to compete with foreign yards that have a history of producing similarly designed ships.

The STP would be available to any shipyard able to contract for at least two vessels of a similar type that can be built competitively as part of a continuing series.

Under the STP program, the government would commit to a specific, declining payment for not only the first and second vessels for which orders are signed, but also for the follow-on vessels in the series, thus assuring the shipyard that it can sell vessels as if they were part of a continuing series of standard ships. Priority for awards is based on the shipyard's ability to demonstrate that it can achieve the world market price with the fewest number of vessels in the series and with the smallest differential payment by the Government over the life of the series.

The STP is specifically designed as a temporary program with initial funding of $200 million. Once the shipyards have become competitive, there will be no need for additional series transition payments. The Committee envisions that this will occur within five to seven years.

This new STP program would thus provide U.S.-flag vessel operators with market priced, U.S.-built ships.

However, in the event this proves not to be the case, the bill would allow vessels built overseas to be eligible for MSF payments if the Secretary of Transportation makes a written finding that a U.S. shipyard cannot deliver a comparable vessel to the proposed owner "at the world price due to the unavailability of series transition payments."

It is the Committee's intent that if funding is not available to cover the full Series Transition Payments needed to support U.S. construction of the vessels in question, then STP would be deemed unavailable and foreign vessel acquisition permitted.

TRADE ROUTES

H.R. 2151 would also eliminate many of the existing regulatory burdens faced by U.S.-flag operators under the ODS program. For example, if a vessel owner wants to change the area of operation of a vessel, the owner must now first obtain permission from the Secretary of Transportation. While this trade route system may have made sense in 1936, in today's international market, a shipowner must be able to respond quickly, or lose cargo to a competitor's vessel.

All too often, U.S.-flag vessel owners have used this system to restrict or delay the operations of other U.S.-flag operators by inter-

ceding in the administrative process to force additional reviews by DOT. In the liner trades, foreign-flag vessels carry approximately 80 percent of the cargo. Elimination of these restrictions will help U.S.-flag vessel owners to focus on the real competition—foreign-flag vessels—and not on other U.S.-flag vessels that may have a small share of the market.

VESSEL STANDARDS

The Subcommittee on Merchant Marine and the Subcommittee on Coast Guard and Navigation held a joint hearing on June 17, 1993, to consider the extent to which vessel standards established by the Department of Transportation, through the Coast Guard, place U.S.-flag vessels in foreign commerce at a competitive disadvantage to foreign-flag vessels. While the Coast Guard and the private sector may disagree on the magnitude of the problem, the Committee is concerned that the disadvantage may be considerable in real dollars, may not add significantly to vessel safety, and notes that the Coast Guard accepts as safe, foreign-flag vessels calling at U.S. ports which do not meet the more costly Coast Guard requirements. The Committee is pleased that the Coast Guard is reviewing the extent to which it will begin imposing regulations on U.S.-flag vessels which are comparable to international standards. The Committee encourages the Secretary of Transportation and the Coast Guard to continue to develop requirements that eliminate the cost differential between U.S. and foreign vessels while maintaining high standards of vessel safety.

FAIRNESS

The Committee recognizes that the combined effect of the statutory requirement for U.S.-flag vessels to use U.S. citizen crews and the tax incentives and other methods used by foreign governments to support their vessels, prevents U.S.-flag ships from operating competitively in international commerce—unless they receive U.S. government assistance. As a result, the Committee believes it would be inherently unfair for the U.S. Government to force a company to operate a vessel under the U.S. flag—by permanently denying it the opportunity to reflag its vessels—without a reasonable level of Government support.

The bill establishes in section 9 a simple principle of fairness: if a vessel cannot obtain MSF payments it will be allowed to reflag. Similarly, if a company wants to expand its operations, it should not be required to use U.S.-flag vessels if MSF contracts are not available. In these cases, the company should be able to expand its operations using foreign-flag vessels.

The Committee emphasizes that this principle of fairness should not be misinterpreted. The Committee strongly supports and, through this bill, is working to enhance, encourage, and expand U.S.-flag operations.

CARGO PREFERENCE

On June 8, 1993, the Subcommittee on Merchant Marine heard extensive testimony from industry, labor, and government witnesses concerning problems with the transportation of Russian food

aid. Recurring themes were that freight rates are unnecessarily high because (1) U.S.-flag vessels in the preference trade are not always engaged under the most favorable commercial shipping terms offered to vessels not engaged in the preference program; (2) risks and costs are shifted to vessel operators contrary to commercial practice where they are apportioned to the party best able to control them; (3) aid agreements are negotiated with little or no consideration for the transportation aspects of the aid and without the use of Department of Transportation expertise; and (4) the current fair and reasonable rate methodology may not reward efficiency appropriately. As evidence of potential cost savings, industry witnesses stated that U.S.-flag vessels transport American agricultural commodities to Israel under commercially-based charters for less than half the cost of transporting food aid to the various former Soviet republics under U.S. government approved charters.

Section 15 of H.R. 2151 amends section 901 of the Merchant Marine Act, 1936 to ensure that (1) U.S.-flag vessels transporting preference cargoes are engaged on terms no less favorable than the most favorable terms offered to any foreign-flag vessel transporting such cargoes; (2) contracts for preference cargoes be based on commercial terms to the extent necessary to reduce costs and further the purposes of the cargo preference laws; (3) the Secretary of Transportation participate in negotiations with recipient countries to the extent necessary to ensure that transportation-related provisions permit fair and reasonable transportation services to be provided; and (4) heads of appropriate agencies transmit their recommendations to the Secretary of Transportation relating to the methodology used by the Secretary to determine whether rates for U.S.-flag vessels are fair and reasonable and will achieve the policy objectives of the Act.

DOD AUTHORIZATION BILL

Finally, the Committee has worked closely with the House Committee on Armed Services to supplement the STP program with a new export program and to include shipyard modernization as an eligible use under the loan guarantee program contained in Title XI of the Merchant Marine Act, 1936. The Committee has also clarified the equity "requirement" provisions for obtaining a Title XI loan guarantee. The Committee is encouraged by the inclusion of these changes in the Fiscal Year 1994 Defense Authorization bill. H.R. 2401. These initiatives will help U.S. shipyards achieve international competitiveness in a reasonable period of time and represent an efficient use of taxpayer dollars. For instance, under the Title XI program, each dollar appropriated provides 10 to 20 dollars in loan guarantees.

SUMMARY

The Committee believes the programs established in H.R. 2151 are a good value to the taxpayer. The bill provides incentives to U.S.-flag owners to operate efficient and cost-conscious operations that will result in a stronger, more competitive U.S.-flag fleet and curb the serious decline in the U.S. merchant marine and shipbuilding industries.

COMMITTEE ACTION

On May 19, 1993, H.R. 2151 was introduced by Chairman Studds, Merchant Marine Subcommittee Chairman Lipinski, Committee Ranking Minority Member Fields of Texas, Merchant Marine Subcommittee Ranking Minority Member Bateman, and 20 additional cosponsors.

The Subcommittee on Merchant Marine held two days of hearings on H.R. 2151. On May 25, 1993, representatives from American maritime labor, liner operators, and bulk operators testified on the legislation. Testimony was received from Mr. James T. Hopkins, Secretary-Treasurer, International Organization of Masters, Mates, and Pilots; Mr. Jerome E. Joseph, Executive Vice President, American Maritime Officers; Mr. Michael Sacco, President, Seafarers International Union; Mr. Talmadge Simpkins, Director, AFL–CIO Maritime Committee; and Mr. Gordon Ward, President, District One, Pacific Coast District-Marine Engineers' Beneficial Association. (Their joint statement also on behalf of the Marine Firemen's Union; Radio-Electronics Officers Union; Sailors' Union of the Pacific; Unlicensed Division of District No. 1, MEBA; and the American Radio Association (International Longshoremen's Association).).

The panel representing the liner operators included: Mr. John P. Clancy, President and CEO, Sea-Land Service, Inc.; Mr. Alan A. Butchman, Esq., Totem Ocean Trailer Express; Mr. William P. Verdon, Esq., Senior Vice President and General Counsel, Crowley Maritime Corporation; Mr. W. James Amoss, Jr., Chief Executive Officer, Lykes Brothers Steamship Company; Mr. J. Robert Leyh, Senior Vice President, Waterman Steamship Corporation; and Mr. J. George Hayashi, President and Chief Executive Officer, American President Lines. (Their joint statement also was on behalf of Central Gulf Lines, Farrell Lines, and Matson Navigation Company.)

The bulk operators were represented by Mr. Philip J. Shapiro, President and CEO, Liberty Maritime Corporation; and Mr. George W. Vlandis, Senior Vice President, Chartering, OMI Corporation.

On July 20, 1993, the Subcommittee on Merchant Marine had a second hearing, receiving testimony from the Administration and an individual concerned with conditions aboard foreign-flag merchant vessels. Testifying for the Administration were the Honorable Joan B. Yim, Acting Administrator, Maritime Administration, Department of Transportation; and Mr. William J. Lynn, Director, Program Analysis and Evaluation, Department of Defense. Dr. Paul Chapman, Instructor, Bangor Theological Seminary, also testified.

Record materials were received from C. Bradley Mulholland, President and Chief Executive Officer, Matson Navigation Company, Inc.

On July 29, 1993, the Subcommittee on Merchant Marine met to markup H.R. 2151. Chairman Lipinski offered an amendment in the nature of a substitute that responded to testimony received at the two hearings.

The substitute authorized a Maritime Security Fleet (MSF) program at $2.3 million per eligible ship for the first year, reduced to

$2.1 million per year for the remaining years of a 10-year contract. The total estimated cost would be slightly less than $2 billion. Eligible vessels include those currently receiving ODS, including container ships, roll-on/roll-off (Ro-Ro) vessels, bulk vessels, and any other vessels having military utility. The substitute contained provisions to minimize adverse impacts if a MSF operator also engages in the domestic noncontiguous trades (continental United States to Alaska, Puerto Rico, and Hawaii).

The substitute also made a number of changes to H.R. 2151, as introduced. The priority for awarding MSF contracts was modified as follows: (1) to vessels of U.S.-controlled companies; (2) to vessels of foreign-controlled companies under contracts with DOD; and (3) to any U.S.-flag vessels of any remaining foreign-controlled companies. MSF agreements may be entered into for existing ODS vessels, but MSF payments could not be made until ODS ends. Existing foreign-built vessels would be eligible for MSF but new foreign-built vessels would be eligible for MSF but new foreign-built vessels would be eligible only if the Secretary of Transportation found that U.S. shipyards could not meet world construction prices because there is no money for STP. A new ship—built under a contract signed before May 19, 1993—would be eligible, but the owner also must build a new ship in the U.S. if STP funding is available.

Ms. Schenk offered an amendment to the provision in the substitute that would require a vessel contractor to repay amounts received under the new MSF program if the contractor failed to comply with the terms of a MSF operating agreement. Ms. Schenk's amendment required that, in addition to repaying the funds, a contractor in noncompliance would be required to pay interest. The amendment imposes an annual interest rate equal to 125 percent of the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price of three-month United States Treasury bills during the quarter preceding the date of failure to comply with the MSF agreement.

The Schenk amendment was agreed to by voice vote.

Mr. Kingston questioned the requirement that U.S.-flag ships carry a radio operator. Mr. Kingston expressed concern that U.S. ships were actually required to have more crew members than necessary for the safe operation of the vessel. Mr. Kingston indicated that he wanted to bring this matter to the Subcommittee's attention and that he was contemplating offering an amendment for consideration by the Full Committee.

The substitute, as amended, as approved by voice vote and reported to the Full Committee.

On August 5, 1993, the Full Committee on Merchant Marine and Fisheries met to mark up H.R. 2151. Chairman Studds, on behalf of himself, Mr. Fields, Mr. Lipinski, and Mr. Bateman offered an en bloc amendment addressing a number of provisions. The amendment incorporated numerous provisions resulting from discussions among vessel owners, other companies, and maritime labor.

Several changes were made to the section dealing with the noncontiguous trades and the grandfathering of existing operators in those trades in the context of the new MSF program. The amendments established a new priority system for the allocation of the MSF contracts, deleting the proposed lottery system and allowing

owners of vessels under contract with DOD to be included in the first priority for contracts. The amendment also provided that if funds are not available for the MSF program, a vessel could be transferred to a foreign registry. The amendment also required the permission of the Secretary of Transportation before a U.S.-flag operator could operate foreign-flag vessels. However, this restriction would not apply if the operating assistance authorized under the bill was unavailable. The amendment also eased the trade route restrictions for existing ODS operators so they could change vessel routes to meet customers' needs. The amendment also added new general language clarifying existing cargo preference programs, and made several technical changes to existing laws and other provisions of H.R. 2151.

Mr. Tauzin offered an amendment to the en bloc amendment to clarify the provision providing trade route protection to certain liner operators while lifting restrictions on certain other trade routes. The en bloc amendment provided certain freedoms for ODS operators on Trade Routes 2 and 8. Trade Route 2 is in the Pacific Ocean and Trade Route 8 is in the Middle East and South Asia. The Tauzin amendment included Trade Route 1, Northern Europe and the Mediterranean.

The Tauzin amendment was agreed to by voice vote.

The en bloc amendment, as amended, was then approved by the Committee by voice vote.

Mr. Taylor of Mississippi offered an amendment which required that, after May 19, 1993, only vessels built, or rebuilt in a U.S. shipyard, would be eligible for operating subsidies under the new MSF program. The amendment prohibited any new foreign-built ships from participating in the MSF program.

The Taylor amendment was defeated by voice vote.

Mr. Tauzin offered an amendment addressing the fact that ODS contracts on most vessels built with the assistance of CDS expire when the vessels reach twenty years of age. The amendment deemed certain CDS-built tankers, constructed in a series, to have reached the age of 20 years. The amendment placed CDS-built tankers and dry-bulk vessels built in a series on a par with other CDS-built vessels by treating them as if they were 20 years old whenever their ODS contracts expire.

The amendment also eliminated an unintentional consequence of section 4(b) which removed the foreign trading obligation from all CDS-built tankers and dry-bulk cargo vessels as soon as their ODS contracts expire. It is debatable whether the requirement of section 506 of the Merchant Marine Act, 1936 that CDS-built tankers operate exclusively in the foreign trade expires when the vessels reach twenty years of age. The amendment accelerates the age of any CDS-built tankers and dry-bulk vessels built in a series, thereby placing them on an equally with other CDS-built tankers and dry-bulk vessels. The amendment leaves the general effect of section 506 to be decided by the Maritime Administration on the basis of the original Congressional intont.

The Tauzin amendment was approved by voice vote.

Mr. Cunningham offered an amendment to delete Section 5 of the bill, entitled "Elimination of Construction-Differential Subsidy Restrictions." The language in section 5 codifies the existing inter-

pretation of the Maritime Administration that current law permits a vessel built with the aid of CDS to enter the domestic trade upon repayment of the amortized portion of the CDS or upon the vessel's reaching the end of its economic life. For liner vessels, the economic life is twenty-five years, and for tankers it is twenty years.

Mr. Cunningham stated that he simply wanted to preserve existing law and continue to rely on the administrative interpretation of the Maritime Administration and not put that interpretation into law.

After considerable discussion, Mr. Cunningham withdrew his amendment.

Mr. Kingston offered an amendment to exempt a United States ship operating in accordance with the Global Maine Distress and Safety System (GMDSS) provisions of the Safety of Life at Sea Convention, from the provisions of the Communications Act of 1934 (47 U.S.C. 351, *et seq.*). This law requires that any cargo ship of 1,600 gross tons or more must be equipped with a radio telegraph station operated by one or more radio officers or operators.

Mr. Kingston explained that his amendment recognized that Morse Code operators are no longer deemed critical to the safe operation of a vessel and, in fact, the Coast Guard had recently announced that it would no longer monitor Morse Code telegraphic distress signals. Mr. Kingston also indicated that he believed it would be possible for a vessel operator to save money by eliminating a separate radio operator as part of the vessel's crew. Mr. Kingston indicated that he was aware that the Communications Act of 1934 was a matter within the exclusive jurisdiction of the House Committee on Energy and Commerce, but he felt that this matter was an appropriate topic for the Committee on Merchant Marine and Fisheries, in consultation with the Committee on Energy and Commerce, to address at a subsequent time.

After some discussion, Mr. Kingston withdrew his amendment.

H.R. 2151, as amended, was approved by the Committee on Merchant Marine and Fisheries, by voice vote, and ordered reported to the House of Representatives.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

Section 1 provides that the name of the Act is the "Maritime Security and Competitiveness Act of 1993".

SECTION 2. PURPOSE OF THE MERCHANT MARINE ACT, 1936

Section 2 clarifies the purpose of the Merchant Marine Act, 1936 by providing that the Secretary of Transportation is required to carry out the Act in a manner that ensures the existence of an operating fleet of U.S.-flag vessels—

(1) sufficient to meet the domestic and international water transportation needs of the United States;

(2) adequate to serve as a naval auxiliary in time of war or national emergency;

(3) owned and operated by citizens of the United States, to the extent practicable;

(4) composed of the best-equipped, safest, and most modern vessels;

(5) manned by the best trained and efficient U.S.-citizen personnel; and

(6) supplemented by modern and efficient United States facilities for shipbuilding and ship repair.

By amending the law to emphasize the need for a U.S.-flag fleet, the Committee believes that the nation's economic and security needs will be enhanced.

SECTION 3. MARITIME SECURITY FLEET PROGRAM

Section 3 adds a new Title IV to the Merchant Marine Act, 1936 (the Act), entitled the "Maritime Security Fleet Program".

Section 401. Establishment of maritime security fleet

New section 401 of the Act requires the Secretary of Transportation (the Secretary) to establish a fleet of active commercial vessels to enhance sealift capabilities and to maintain a presence in international commerce of U.S.-flag vessels. The fleet is to be know as the "Maritime Security Fleet".

Section 402. Composition of fleet

New section 402 of the Act defines the Maritime Security Fleet (MSF) to be the fleet of vessels that are covered by operating agreements entered into under new section 404.

Section 403. Vessels eligible for enrollment in fleet

New section 403 establishes the criteria that vessels must meet to be eligible to be covered by an operating agreement. The Secretary is required to make all decisions on vessel eligibility within 90 days after the date an application for an eligibility determination is submitted by the owner or operator of the vessel. Depending on the amount of appropriated funds available, there may be more vessels on the eligibility list for the MSF program than vessels actually enrolled in the MSF. This information will help the Administration and Congress decide whether additional funds should be made available to enroll additional vessels in the MSF.

New section 403(b) of the Act requires the Secretary to make a finding that a vessel is eligible for enrollment in the MSF if the vessel meets a number of specific criteria including:

That the owner or operator of the vessel agrees to enroll the vessel in the MSF if the Secretary offers them an operating agreement;

that the person that will be the contractor (owner or operator of the vessel) is a citizen of the United States;

that the vessel is currently a U.S.-flag vessel, and if not, is not more than 10 years old when it is placed under the U.S.-flag;

is built and if rebuilt, rebuilt in the United States;

the vessel was built in an unsubsidized foreign shipyard under a contract entered into before May 19, 1993;

if the vessel is built in a foreign subsidized shipyard under a contract entered into before May 19, 1993, the owner has contracted to build a vessel in a U.S. shipyard unless the Sec-

retary finds that a U.S. shipyard cannot sell a vessel to that owner at the world price due to the unavailability of series transition payments under title XIV; or

if the vessel is built under a contract entered into after May 19, 1993, the owner must at least have solicited nationwide bids in the United States for at least 6 months and the vessel must be built in a U.S. shipyard unless the Secretary finds that a U.S. shipyard cannot sell a vessel to the owner at the world price due to the unavailability of series transition payments; and

that the vessel is a container vessel with a capacity of at least 750 Twenty-foot Equivalent Units (TEU's); a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 TEU's; a LASH vessel with a barge capacity of at least 75 barges; a vessel currently subject to an ODS contract; or any other type of vessel that the Secretary determines is suitable for use by the United States for national defense or military purposes in time of war or national emergency. This defense standard is the same standard as currently used to determine eligibility under the ODS program.

New section 403(c) requires the Secretary to make determinations concerning eligibility of a vessel to be enrolled in the MSF program within 60 days after the date of receipt of an application for an eligibility determination. If the Secretary decides that a vessel is not eligible for enrollment in the program, the Secretary must provide the applicant with a written explanation of the reasons that the vessel does not meet the eligibility requirements.

New section 403(d) requires the Secretary to maintain a list of all vessels that the Secretary had determined to be eligible for enrollment in the MSF program. The Secretary may remove a vessel if, at any time, the vessel or the proposed contractor no longer meets the eligibility requirements for enrollment in the MSF program prescribed under this section.

Section 404. Opening agreements, generally

New section 404(a) of the 1936 Act allows a vessel to be enrolled in the MSF program only if the owner or operator of the vessel enters into a MSF operating agreement with the Secretary.

New section 404(b) establishes the order in which the Secretary shall award contracts for vessels based on 3 priorities.

The first priority includes two types of vessels: those that are owned by citizens of the United States under section 2 of the Shipping Act, 1916, where controlling interests are owned and controlled by U.S. citizens; and those that are less than 5 years old and owned by persons that are eligible to own a U.S.-flag vessel if the owner also operates or manages other U.S.-flag vessels for the Secretary of Defense or charters vessels to the Secretary of Defense. However, the number of vessels for which an owner and operator may be awarded an operating agreement under this priority is capped at the number of U.S.-flag vessels that the owner operated in the foreign commerce of the United States (except mixed coast wise and foreign commerce) on January 1, 1993, plus the number of U.S.-flag vessels that the owner had under charter to the Secretary of Defense on that date. The maximum number of

vessels that a documentation citizen that also operates or manages other U.S.-flag vessels for the Secretary of Defense or charters vessels to the Secretary of Defense under subparagraph (A)(ii) is 4 vessels.

To the extent that appropriated funds are available after awarding contracts for all eligible vessels covered under the second priority. The second priority includes the same two types of vessel owners that are eligible under the first priority, for their vessels that are in excess of the cap for that owner or operator in the first priority (described above).

To the extent that appropriated funds are available after awarding contracts for all eligible vessels covered under the first and second priorities, the Secretary shall award contracts for vessels owned and operated by any person that is eligible to own a documented vessel. This is the third priority.

The Committee notes its intent that each contract would not necessarily have to be funded at the same level. For example, a bulk vessel may engage in carrying bulk parcels of Title IX preference cargo of over 12,000 tons and would have its MSF payments reduced for periods engaged in carrying these parcels. The Secretary could reasonably determine that a 10-year contract for such a vessel would not require funds equivalent to $2.1 million for each year of the contract.

New section 404(c) of the act provides for a system of allocating contracts within each priority. If insufficient funds are available to award contracts for all eligible vessels within a priority, then the Secretary shall award contracts for each owner in proportion to the amount of funding available over the amount of funding needed for all eligible vessels within that priority. For example, if $400 million is appropriated and $800 million is needed to award contracts for all vessels in the first priority, then each contractor would be awarded contracts for up to 50% of the number of eligible vessels they may have under that priority. If an additional $700 million is appropriated in the next fiscal year, then the remaining eligible vessels in the first priority would be awarded contracts, and $300 million would be available to fund vessels in the second priority. If $400 million is needed to award operating agreements to all eligible vessels in the second priority, then each contractor will be awarded up to 75% of the number of eligible vessels that they may have under that priority.

The Committee notes that, within the various priorities for awarding MSF contracts, the Secretary should award contracts based on a pro rata system. Thus, if a carrier (including related parties) represents 20 of 100 vessels in a priority and there are funds for 50 contracts, that carrier should receive 20 percent of the contracts.

The "approximately" language in section 404(c)(2) will, however, allow the Secretary to address cases where the facts would result in award of fractions of contracts if a pure pro rata system were used.

It should also be noted that, even though less money may be needed for a bulk contract (due to the likely carriage of preference cargo by such vessels), operators of fleets of eligible bulk vessels are not, under the priority system, entitled to priority for $2.1 mil-

lion (as authorized in section 405) times 10 years per vessel. Thus, funds not needed to support a contract for a bulk vessel could be used on other vessels owned by others, in accordance with the priority system.

New section 404(d) of the Act requires the Secretary to enter into MSF operating agreements within 90 days after making a decision that the vessel is eligible to be enrolled in the MSF program, subject to availability of appropriations.

New section 404(e) establishes the effective date for an operating agreement. The effective date may not be later than the later of: (1) the date the vessel covered by the agreement enters into the foreign commerce; (2) the date the vessel is withdrawn from an ODS contract or that contract is terminated with respect to that vessel; or (3) the date of the expiration or termination of a charter of the vessel to the U.S. Government for any charter that was entered into before the date of enactment of the Maritime Security and Competitiveness Act of 1993. For example, if a vessel is covered by an ODS contract, the MSF operating agreement may be entered into on July 1, 1994, but it may not take effect until July 1, 1997 (when the ODS contract expires) and will run through July 1, 2007.

New section 404(f) of the Act terminates any offer by the Secretary to enter into an operating agreement 120 days after the offer is made unless the Secretary decides to extend that offer. This provision will preclude an owner from locking up slots in the program indefinitely without placing a vessel under the contract.

New section 404(g) of the Act provides that the length of an operating agreement is for 10 years from the effective date of the agreement. This section does not prohibit a carrier from voluntarily turning in its contract before its termination date.

New section 404(h) of the Act requires a contractor to repay to the Government any amounts received (plus interest) under an operating agreement during any period of noncompliance with the agreement, including if the contractor fails to operate a replacement vessel under the contract within the time periods prescribed in section 405. The Committee does not intend for the Secretary to reduce payments for unintentional technical or minor violations, particularly if the Secretary, contrary to the Committee's intent, imposes on MSF contractors many recordkeeping or other paperwork or minor requirements.

New section 404(i) prohibits the Secretary from awarding an operating agreement for a vessel whose MSF operating agreement has been terminated under new section 405(a)(10) before the end of the term of the agreement that was terminated. This provision is intended to prevent a liner operator from terminating an operating agreement in order to transport more than 12,000 tons of bulk cargo under the cargo preference laws, and then obtaining a new MSF operating agreement. Under longstanding interpretations of the Shipping Act of 1984 by the Federal Maritime Commission, cargo placed in a container is not considered bulk cargo.

New section 404(j) of the Act provides that any MSF operating agreement entered into by the Secretary constitutes a contractual obligation of the Government to pay the amounts provided for under the agreement. Failure of the Government to pay the

amounts provided for does not eliminate the Government's liability to pay those amounts. Section 404(b) provides that "subject to the availability of appropriations," the Secretary shall enter into MSF contracts. Therefore, the Secretary may not sign a contract unless appropriations have been provided. One a contract has been signed, however, it is the Committee's intent that a MSF contract is a "binding obligation" of the United States Government for payment of the contract similar to the existing ODS program.

Section 405. Terms of operating agreements

New section 405(a) of the Act sets forth various provisions that must be included in MSF operating agreements. These requirements include:

(1) That the vessel be documented under U.S. law and operated in the foreign commerce, (trade between the United States and a foreign country or between 2 foreign countries). The vessel may not be operated in the coastwise trade, except for the trade between the United States and Guam, American Samoa, Wake Island, Midway Island, or Kingman Reef.

(2) That the annual payments for the vessel under the operating agreement will be $2.3 million for FY 1994 and $2.1 million for each subsequent fiscal year. However, the Secretary may not pay any of those amounts for the days during which the vessel is under a charter to the Government that was entered into before the date of enactment of this Act or if the vessel is already covered by an ODS contract.

(3) That the vessel may not be eligible for payments once it reaches 25 years of age unless it qualified under one of 3 exemptions. Specifically, a vessel may receive payments under its operating agreement until it is 30 years old if the vessel is reengined in a U.S. shipyard between the effective date of the operating agreement and before the vessel is 25 years of age. Second, a vessel that reaches 25 years of age may continue under its operating arm if the contractor enters into a binding contract with a shipyard for a replacement vessel and the replacement vessel is delivered not later than 30 months after the date the operating agreement is entered into or 30 months after the date the vessel turns 25 or 30, as the case may be. And, third, a vessel that reaches 25 years of age may continue under its operating agreement if the contractor acquires a replacement vessel from the list of vessels on the eligible vessel list and places the vessel under the operating agreement within 12 months after the date the operating agreement is entered into or 12 months after the date the vessel turns 25 or 30, as the case may be.

(4) That, at the request of the President during time of war or national emergency, or when considered by the President to be necessary in the interest of national security, the contractor shall make the vessel available to the Secretary as soon as practicable. If the national security needs of the Government can be met by use of a space charter, the contractor shall provide space on the vessel covered by an agreement on a guaranteed basis. The Secretary in carrying out this section is expected to charter space on the vessel before acquiring the vessel under a time charter. The agreement also must specify the time and method of delivery of the vessel and

the amount of compensation to be paid by the Government to the contractor for using the vessel during this period.

(5) That the vessel must be operated for at least 320 days in a fiscal year in the trades described above, including days during which the vessel is drydocked, surveyed, inspected, or repaired. If a vessel operates for less than that time, the annual payments shall be reduced proportionately.

(6) That the contractors may substitute a different vessel from the list of eligible vessels for the vessel operating under the operating agreement. This will allow contractors to plan for the acquisition of new eligible vessels with the certainty that they can be placed under the operating agreement without the need to get Government approval for the substitution.

(7) That a liner vessel's contract shall be terminated if the vessel covered by the operating agreement is not operated for one year and the contractor has not placed another vessel under the operating agreement. The purpose of this provision is to ensure that the U.S. has a fleet of active vessels, and that a contractor is not simply tying up program slots which the Secretary could otherwise use to keep active vessels under the U.S. flag.

New sections 405(a) (6) and (7) refer to reimbursement or compensation of a carrier for certain costs of providing services to DoD as provided in the operating agreement. These amounts are in addition to the MSF amounts received by the contractor. By use of this language, the Committees does not intend that the details of such compensation must be finalized in order for a carrier and the Secretary to be able to enter into a MSF agreement. The Committee intends that the Secretary is authorized to negotiate those details with the carrier and amend an agreement, so that the initial operating agreement would provide for subsequent agreement on those terms. The Committee does not, by these provisions, intend to allow the Government to effectively withhold MSF assistance to a carrier by insisting that a term of an operating agreement provide unfairly low compensation for those extra services, penalizing the carrier with a delayed start to its MSF agreement for failing to promptly accept unfair terms. However, the Committee expects the carriers to provide the government with fair, equitable and competitive rates.

New section 405(b) of the Act requires the Secretary to pay the amounts required under the MSF operating agreement at a prorated amount at the beginning of each month in equal installments, except for reduction due to the vessel's not being operated in conformance with the operating agreement as described above. The amounts received by liner vessels may not be reduced due to the fact that they are transporting government preference cargoes. However, a bulk vessel may not receive MSF payments under an operating agreement for the days in which they are transporting government cargoes in bulk.

New section 405(c) of the Act requires the Secretary to redeliver any vessel acquired for national security purposes to the contractor at a place that is mutually agreed to by the parties and in the condition in which it was delivered to the Secretary, excluding normal wear and tear.

New section 405(d) of the Act allows a contractor to transfer an operating agreement to any other person that is qualified to hold that contract, after notifying the Secretary of that transfer under regulations prescribed by the Secretary. The Secretary may disapprove that transfer within 90 days after the date of the notification. There are 2 purposes for this provision. First, it will eliminate the current practice of transferring contract benefits through chartering arrangements. Under the bill, instead of chartering a vessel to another operator at a rate that reflects the owner's subsidy payments, the owner can simply transfer the vessel and contract. Second, if a vessel reaches 25 years of age or is sunk and the vessel owner does not put a replacement vessel under the contract, the owner can simply transfer the contract to another owner. If the contract were to be turned in to the Secretary, there probably would not be sufficient funding available to enter into a new 10-year contract with another owner. Therefore, the transfer provision simply allows this funding to be used for the remaining term of the original contract.

Section 406. Noncontiguous trade restrictions

New section 406 of the Act deals with restrictions on contractors that also operate vessels in the noncontiguous coastwise trade, that is the trade between the continental United States and Alaska, Puerto Rico, and Hawaii.

New section 406 reinforces the policy of the 1936 Act of ensuring that Government assistance which strengthens U.S.-flag international carriers against foreign competitors is not used unfairly to disadvantage U.S.-flag carriers operating in noncontiguous trades. Section 406 is modeled after Section 805(a) of the Merchant Marine Act, 1936, but is less restrictive in its impact and more streamlined in its procedures. Subsection (a)(1) generally provides that an operator receiving MSF payments for vessels operated in the foreign trade may not participate simultaneously in the noncontiguous trades, as defined, either directly or indirectly (e.g., through a subsidiary or other commonly controlled entity, or a related third-party), unless the operator receives a waiver from the Secretary. A waiver is required for a material change or increase in permitted noncontiguous service, as well as for new service.

Section 805(a) of the 1936 Act requires an operator receiving ODS for its foreign trade operations to obtain Secretarial permission prior to entering a domestic trade, either directly or through an affiliate. New section 406(a) similarly provides that, if a MSF contractor is receiving MSF payments, neither it nor an affiliate may enter or maintain service in a noncontiguous trade, unless the contractor receives a waiver from the Secretary. Also a contractor cannot (with certain exceptions) make a material change or increase in a noncontiguous service for which a waiver has been granted without first obtaining an additional waiver.

Subsection (b) generally provides that the Secretary may grant the waiver upon making certain findings. Subsection (b) requires the Secretary to deny any application (except those grandfathered in new subsection (c)) if it would result in unfair competition to an operator of an exclusively domestic service or be prejudicial to the objects or policy of the 1936 Act as amended by this bill. These

standards are the same as those used in section 805(a) of the 1936 Act. The Secretary is expected to grant waivers based on the nature of the proposed service. In addition, there is a specific requirement that an application for a new, or material change, in noncontiguous service must be denied if the existing service is adequate; except that, in the Hawaii trade, the adequacy test will not apply if a carrier in that trade that operated between Hawaii and Johnston Island on July 1, 1992, becomes a MSF contractor for 4 or more vessels under paragraph (6)(A) of this subsection.

Subsection (b) continues existing policy, recognized by the Supreme Court in *Seatrain Shipbuilding* v. *Shell Oil Company*, 444 U.S. 572 (1980), that it is proper for Congress to protect the substantial investments of nonsubsidized carriers from unfair competition by subsidized carriers.

Subsection (b) also allows carriers that are presently in noncontiguous trades to become MSF contractors for other vessels in foreign trade while remaining in the noncontiguous trade at grandfathered levels of service. The Committee believes this protects consumers and the investments of those carriers and avoids disruption of ocean transportation service in those trades. It is intended that timely applications for waivers confirming grandfathered rights provided for in this section shall be granted by the Secretary by the date on which the Secretary offers the applicant an operating agreement for a vessel or vessels in the MSF. Under the bill, noncontiguous trade carriers to whom waivers have been granted will have the right, without need for further waiver, to add capacity in proportion to growth of the economy of the state or commonwealth which they serve.

Additionally, subsection (b) grandfathers the capacity of the existing coastwise operators at the capacity of the vessels employed in the service in the given trade on July 1, 1992. The term "capacity" means the capacity of the vessels used in that trade, and is a function of both the carrying capacity of a vessel and the number of voyages it made during the year. For example, if a company had 2 vessels and Vessel #1 had a capacity of 500 TEU's and made 12 voyages and Vessel #2 had a capacity of 200 TEU's and made 20 voyages, the total capacity of that operator would be 10,000 TEU's per year ((500)(12)+(200)(2)=10,000).

A carrier that is not in noncontiguous trade prior to becoming a MSF contractor would not be grandfathered and would thus have to file an application and go through the normal notice and hearing process and overcome the adequacy test in order to obtain a waiver to enter into noncontiguous trade.

Subsection (b), like section 805(a) of the 1936 Act, has a requirement for a hearing, but unlike section 805 it imposes a 90-day time limit to assure prompt decisions by the Secretary. Also subsection (b) provides for the hearing to be "on the record" for purposes of the Administrative Procedure Act. Moreover, these hearings are not required on applications for confirmation of grandfather rights; instead, public notice and opportunity for written comments are to be provided.

Subsection (c) grandfathers specific levels of service in the noncontiguous trades to prevent disruption in service, and protect consumers. It is intended that, when an operator makes application

for a waiver confirming grandfathered rights at the same time as application for a MSF operating agreement, the waiver be granted by the date on which the Secretary offers the applicant an operating agreement for vessels in the MSF. The services to be grandfathered are determined with reference to ports served, annual number of vessel sailings, and container or cargo capacities.

Descriptions of services which include the number of sailings and capacity of ships that are grandfathered in the bill are intended to match services currently offered by specific carriers. For example, Sea-Land would be grandfathered in the trade from the West Coast to Hawaii for 104 sailings per year with an annual capacity of 68,588 TEU's, which is 75% of Sea-Land's annual capacity (which represents current amount of capacity used) on vessels it presently employs in that service. This does not limit capacity available for service beyond Hawaii to Guam or foreign destinations. Crowley's Hawaii service is exclusively in noncontiguous trade and is predominantly a non-containerized service. Crowley would be grandfathered in the Hawaii trade at its annualized capacity.

In Alaska, Sea-Land would be grandfathered to the full extent of its July 1, 1992 containership capacity in the trade and Crowley would be grandfathered to the full extent of its total vessel railcar capacity in common carriage to and from the Anchorage/Whittier range, plus capacity outside that range, in the trade on that date. This means, for example, that Sea-Land in containership linehaul service will be able to provide capacity up to the amount that could be provided by the three ships (the *Sea-Land Anchorage, Sea-Land Kodiak*, and *Sea-Land Tacoma*) it now operates between Washington and Alaska and could make 103 sailings per year in each direction in that service, even though it currently is operating at about two-thirds of capacity, while Crowley could make 55 sailings in common carriage.

In addition, under subsection (c)(2)(C)(v), Crowley would be grandfathered for unscheduled contract carrier service between the 48 contiguous States and points in Alaska south of the Arctic Circle (except the port range between and including Anchorage and Whittier because it is covered by Crowley's grandfathered common carrier service). For this unscheduled service the capacity permitted will be the physical capacity of the vessels employed times the number of voyages actually made by such vessels in the trade during either of the two consecutive 12-month periods immediately preceding July 1, 1992, whichever is higher. No contractor would be limited in service between the contiguous 48 States and points north of the Arctic Circle.

Each grandfathered operator will have the right to adjust capacity upward in direct proportion to growth in the economy of the State of Commonwealth which it serves. The increase in capacity need not be immediately provided. However, subsection (d)(7)(B) requires, as a general rule, that in service for Alaska, which has a relatively small and volatile economy and is subject to large swings in cargo volume, a grandfathered operator must actually commit growth capacity to the trade to take advantage of any annual right to increase capacity. This will ensure timely response to sudden growth in the Alaska economy. No Secretarial waiver would be required for such increase.

The same provision recognizes and provides special consideration for the problems facing operators of containerships in service dedicated to Alaska. New containerships represent huge investments for which an operator must be able to plan several years in advance. In the Alaska trade, once a containership operator is operating at load factors of 90%, it may thereafter accumulate annual increases in its allowable capacity. In other words, the allowable increases "compound" and may be "banked" once the operator attains ninety percent load factors. Recognizing that the trade is seasonal, 90% load factors are required during any 9 months of the year.

Applications for required waivers for a material change or increase in service will be received and acted upon under the provisions pertaining to new waviers.

A MSF contractor that does not now carry cargo in any noncontiguous trade, as defined, is not grandfathered and would have to file a waiver application and go through notice and a hearing, which would include an adequacy test, if it wished to enter a noncontiguous trade.

A waiver to continue or change service to or from Guam is not required. Guam has been excluded from the definition of noncontiguous trade in this section, as it is excluded from the 1936 Act's restrictions on subsidized operators.

Subsection (d) permits the Secretary to temporarily waive restrictions upon noncontiguous service if a material change or increase is necessary to respond adequately to an environmental or natural disaster or emergency or another emergency declared by the President.

Subsection (e) requires a written annual report by each operator receiving a waiver to operate in a noncontiguous trade. This will allow the Secretary and interested parties to monitor compliance with the written waiver.

Subsection (f) contains definitions of "noncontiguous trade" and "related party". The word "point" in the definition of "noncontiguous trade" and in subsections (c)(2)(C)(iv) and (v) includes a port.

Section 407. Operating competing foreign vessels

New section 407 of the Act generally restricts a contractor from owning, chartering, or operating a foreign-flag vessel in competition with a U.S.-flag vessel and is based on similar restrictions placed on ODS contractors under section 804. There are 3 exceptions to this general prohibition.

The first exception is if the contractor has applied for a MSF operating agreement for an eligible U.S.-flag vessel to be operated in the same service as the foreign-flag vessel and the Secretary, does not award an operating agreement within 60 days after the application is submitted due to the unavailability of appropriated budget authority. It is the Committee's view that the Government should provide financial incentives for the contractor to place additional vessels under the U.S. flag. If the Government fails to provide these incentives, then the contractor may purchase foreign-flag vessels.

The second exception is derived from existing law (section 805), and allows the Secretary, after notice and an opportunity for a

hearing, under special circumstances and for good cause shown, to waive the prohibition.

The third exception allows any foreign-flag vessel owned, chartered, or operated by that contractor on August 5, 1993, to continue to operate in competition with U.S.-flag vessels. This grandfather includes present foreign-flag operations, not just the vessels. Thus, replacements for foreign-flag vessels presently chartered, owned, or operated are intended to be within the scope of new section 407(b)(3).

For the purpose of new section 407(b)(1), the Committee intends that the Secretary accept an "application" for a MSF contract in the absence of a particular vessel. The Committee believes that it would be unfair to require an applicant to acquire a new vessel which is eligible for the MSF program merely so that it can apply for a contract and be turned down. Thus, the Committee intends that a person may apply for a determination of whether funds are available, and if not, to allow that person to acquire a vessel for foreign-flag operation. The Committee further intends that there should be some reasonable time limit tied to the ability to obtain a right to operate foreign-flag vessel due to a negative determination as to the availability of funds. If the foreign-flag vessel is not deployed within a reasonable period (such as within one year for an existing vessel, three or four years for a vessel to be built), then the contractor will have to reapply. The Committee does not intend this section to allow operators to "bank" future rights to operate foreign-flag vessels which are not currently needed.

Section 408. Funding for operating agreements

New section 408 of the Act authorizes appropriations necessary to pay the amounts needed annually to meet the contract requirements. This section also authorizes any funds otherwise available for ODS contracts that are no longer required for those contracts to be used to pay for MSF obligations.

Section 409. Definitions

New section 409 of the Act provides definitions for the new title IV.

SECTION 4. OPERATING-DIFFERENTIAL SUBSIDY CONTRACTS

Section 4(a) provides that any existing ODS contract shall continue in effect unless it is voluntarily terminated by the vessel owner.

Section 4(b) adds a new section 506(b) to the Merchant Marine Act, 1936. The ODS contracts on most CDS vessels expire when they reach 20 years of age. For CDS tankers built in series, their ODS contracts expire 20 years from the delivery of the first of the series, with the result that later vessels in the series are left without subsidy although they have not yet reached the age of 20. Section 506(b) places CDS tankers and dry-bulk vessels built in a series on a par with other CDS vessels by treating them as if they were 20 years old whenever their ODS contracts expire. Section 4(b) does not address the issue whether under section 506(a) CDS tankers and dry-bulk vessels reaching that age are free to leave the foreign trade.

Section 4(c) adds a new section 616 to the Merchant Marine Act, 1936, that provides exceptions to both current restrictions on ODS contractors operating foreign-flag feeders and requirements to operate their ODS vessels on essential trade routes.

New section 616(a) provides the first exception. The trade route and foreign-flag restrictions do not apply if the ODS contractor submits an application to the Secretary for an eligibility determination for enrollment of all of that contractor's vessels covered by an ODS contract and all of those vessels for which a MSF operating agreement is offered by the Secretary are enrolled in the MSF program. For example, if an ODS vessel is not offered a MSF operating agreement because the vessel is too old or because there are insufficient funds to enter into the MSF agreement, then the vessel may remain under the ODS program but is freed of the essential trade route restrictions and the restrictions on operating foreign-flag vessels.

New section 616(b) provides for removal of trade route and foreign-flag restrictions on a trade route-by-trade route basis. These restrictions will no longer apply on trade routes for any operator that transfers 50% or more of its vessels operating on that trade route to the MSF program or if the ODS contractor is the only ODS contractor on that trade route and all other U.S.-flag vessels operating on that trade route are enrolled in the MSF program.

This subsection also provides for the specific elimination of all trade route and foreign-flag vessel operating restrictions on Trade Routes 1, 2, and 8 for ODS contractors when any operator on Trade Route 2 begins receiving MSF payments for operations anywhere in the world.

SECTION 5. ELIMINATION OF CONSTRUCTION-DIFFERENTIAL SUBSIDY RESTRICTIONS

Section 5 adds a new section 512 to the Merchant Marine Act, 1936. New section 512 eliminates all prohibitions in the 1936 Act and in a CDS contract that prohibit a liner vessel constructed, reconstructed, or reconditioned with the aid of CDS from entering the coastwise trade beginning on the date that is 25 years after the date of the original delivery of the vessel from the shipyard.

This section does not change or otherwise affect the ability or inability of other vessels built with the aid of CDS to engage in the coastwide trade once those vessels reach the end of their economic life, or the ability or inability of liner vessels built with the aid of CDS to engage in the coastwise trade if this section is not enacted into law.

SECTION 6. DEFINITIONS APPLICABLE TO MERCHANT MARINE ACT, 1936

Section 6 amends 2 definitions in section 905 of the Merchant Marine Act, 1936 and adds 2 definitions to this section.

Section 905(a) is amended to clarify that the terms "foreign commerce" and "foreign trade" include trade between foreign ports.

Section 905(c) is amended to change the definition of a "citizen of the United States" from a citizen as defined in section 2 of the Shipping Act, 1916, to a citizen that is eligible to own a documented vessel under U.S. law.

New section 905(h) defines the term "foreign subsidized shipyard" to mean a foreign shipyard that receives or benefits from, directly or indirectly, a shipyard subsidy for the construction of vessels if the shipyard is located in a foreign country that has not signed a trade agreement with the United States Government providing for the elimination of subsidies for that shipyard. This includes both privately and publicly owned foreign shipyards.

New section 905(i) adds the definition of "subsidy" for purposes of determining when a foreign shipyard is subsidized. This definition is taken from the draft OECD agreement providing for the elimination of international shipbuilding subsidies.

SECTION 7. GOVERNMENT-IMPELLED CARGOES

Section 7 amends section 901(b) of the Merchant Marine Act, 1936 to change the definition of "privately-owned United States-flag commercial vessels" that are eligible to transport Government cargoes under that title.

SECTION 8. VESSEL FINANCING

In 1988, Congress began easing the restrictions on persons that can be mortgagees for U.S.-flag vessels by eliminating all restrictions on mortgagees for recreational vessels and fishing industry vessels. Additionally, the Secretary was authorized to approve any other person to be a mortgagee for vessels with coastwise and registry endorsements. Section 8(a) amends section 31322 of title 46, United States Code, to eliminate all restrictions on persons that may be a mortgagee for a U.S.-flag vessel. This is done to promote vessel financing. U.S. vessel owners should be able to obtain the cheapest financing available anywhere in the world in the same manner as their foreign competition without having to get approval from the Secretary. In the past, U.S. operators could obtain this financing by setting up a trust in a U.S. bank. These trusts, called "Westhampton Trusts," resulted in additional cost to the U.S. vessel owners without giving any real protection to the Government to control the vessel.

Section 8(b) repeals section 31328 of title 46, United States Code, which provided for the establishment of Westhampton Trusts. This section is no longer needed since all restrictions on mortgagees have been eliminated.

Section 8(c) makes conforming changes to section 9(c) of the Shipping Act, 1916, to eliminate the need to obtain permission from the Secretary before using a foreign mortgagee.

Section 8(d) promotes lease financing for vessels engaged in the coastwise trade by eliminating citizenship requirements for leasing companies. Lease financing has become a very common way to finance capital assets in many industries, including the maritime industry. Many vessel operators choose to acquire vessels through lease financing instead of traditional mortgage financing. Currently, there are no citizenship requirements on leasing companies that finance vessels that have Great Lakes or Registry endorsements. Section 8(d) will allow these companies also to finance vessels that have coastwise endorsements.

Section 8(d) amends section 12106 of title 46, United States Code, to authorize the Secretary to issue coastwise endorsements

for vessels owned by any leasing company that is eligible to own a documented vessel. However, if the leasing company is not a coastwise citizen under section 2 of the Shipping Act, 1916, the vessel may only be operated in the coastwise trade if the vessel is operated under a demise charter to a section 2 citizen for a period of at least 3 years. It is expected that most of the charters will be long-term charters. However, once the initial long-term charter has expired the leasing company may find it necessary to enter into short-term charters until another long-term charter is obtained. The lease agreement need not remain in effect for the full 3 years if there is a default by the lessee or a casualty or other event where the lease might be terminated by the vessel owner or lessee prior to the expiration of that period.

The Secretary may also authorize leases for a period shorter than 3 years under appropriate circumstances such as when a vessel's remaining useful life would not support a lease of 3 years or to preserve the use or possession of the vessel. Paragraph (2) provides that on termination of a demise charter, the coastwise endorsement may be continued for a period not to exceed 6 months on any terms and conditions that the Secretary may prescribe. This will allow the leasing company to move the vessel to maintain it, have it repaired, or layed-up, but does not allow the vessel to be used in the coastwise trade since it is not under a charter to a section 2 citizen.

SECTION 9. PLACEMENT OF VESSELS UNDER FOREIGN REGISTRY

Under section 9(c) of the Shipping Act, 1916 (46 App. U.S.C. 808(c)), the owner of a U.S.-flag vessel may not place that vessel under a foreign registry without the approval of the Secretary of Transportation.

Section 9(a) of H.R. 2151 amends section 9 of the Shipping Act, 1916, by adding a new subsection (e) that provides 3 exceptions to this general rule.

First, an owner may transfer a vessel to a foreign registry if the Secretary determines the owner has placed at least one replacement vessel of a capacity that is equivalent or greater under the U.S.-flag and the replacement vessel is not more than 10 years of age on the date of documentation. However, a carrier cannot transfer a vessel to a foreign registry based on the fact that the owner brought a vessel under U.S.-flag before passage of this bill.

Second, an owner may transfer a vessel to a foreign registry if the Secretary, due to the nonavailability of funds, has not awarded that owner a MSF operating agreement within 60 days after the date the owner applies for that contract. The Committee believes it would be inherently unfair for the U.S. Government to force a company to operate a vessel under the U.S.-flag—by permanently denying it the opportunity to reflag its vessels without a reasonable level of Government support.

The Committee intends that this provision be administered in a straightforward way which is fair to the applicant. In particular, "available funds" means funds actually appropriated prior to expiration of the 60-day period following the filing of the application for a MSF contract. Under this provision, the Secretary may not claim that funds are available for a 10-year MSF contract because the Secretary intends to ask for appropriations at some future point.

If the Secretary has a basis for denying the MSF contract other than unavailability of funds, the Secretary must say so in writing within 60 days.The applicant must not be left wondering on day 61 whether or not the lack of a contract was due to unavailability of funds. It is the Committee's view that, in the absence of a written decision setting forth another reason, the applicant is entitled to consider that the reason was lack of funds.

Third, an owner may transfer a vessel to a foreign registry if the Secretary, due to the unavailability of funds, has not issued a new MSF operating agreement to a MSF vessel owner or operator before the expiration of the contract. This exception operates the same as the second exception, and allows a U.S.-flag vessel that is enrolled in the MSF fleet at the end of the 10-year contract to transfer foreign if there are not sufficient funds to enter into a new MSF contract for that vessel. Without this type of provision owners will be reluctant to invest in new U.S.-flag tonnage based on a 10-year contract without the knowledge that they can reflag their vessel if the Government fails to compensate them for the higher costs of operating that vessel under the U.S.-flag.

SECTION 10. SERIES CONSTRUCTION ASSISTANCE

Section 10 amends the Merchant Marine Act, 1936 to add a new Title XIV—Series Construction Assistance.

Section 1401. Payment of assistance authorized

New section 1401(a) authorizes the Secretary, subject to the availability of appropriations, to pay assistance to the owner of a U.S. shipyard for the construction of any vessel in a series approved by the Secretary under section 1402.

New section 1401(b) sets forth the total amount of assistance to be paid.

Section 1402. Approval of assistance for construction of series of vessels

New section 1402(a)(1) sets forth the general criteria for assistance. The Secretary may approve payments for the construction of a series of vessels in a U.S. shipyard if—

(1) the owner of the shipyard submits an application in accordance with section 1405;

(2) the Secretary makes the determinations of vessel capabilities as described in subsection (b); and,

(3) the Secretary determines that the payment will contribute to maintaining national vessel construction capabilities that are essential in time of war or national emergency. This section is intended to ensure the continued presence of U.S. shipyards with the capability of contributing to national defense mobilization efforts.

New section 1402(a)(2) limits the Secretary's authority to approve series transition payments to an amount that does not exceed 50 percent of the estimate of the cost of constructing the vessel under similar plans and specifications in a foreign representative shipyard.

New section 1402(b) requires the secretary to make a number of determinations prior to approving assistance for the construction of a series of vessels.

New section 1402(b)(1) requires the Secretary to determine that—

(1) the vessels in the series are commercial vessels of at least 10,000 gross tons; and

(2) the vessels are commercially marketable on the international market. The Committee intends that the Secretary evaluate the international marketplace to determine that the particular vessel type proposed for series construction is internationally marketable and is, thus, not so unique in design or function as having only limited or one-time commercial applicability.

New section 1402(b)(2) requires the Secretary to determine that the shipyard in which the vessel is constructed—

(1) is located in the United States; and

(2) upon completion of the series of vessels built under the STP program, the shipyard will be able to build additional vessels of the same type at a price that is competitive in the international market without any STP assistance.

New section 1402(b)(3) requires the Secretary to determine that the applicant—

(1) has the ability, financial resorces, and other qualifications necessary for the construciton of the vessels;

(2) has entered into a contract for each of the first two vessels to be constructed in the series. This requirement may include a contract for a vessel that will be constructed without assistance under this title. For instance, a contract to build a Jones Act vessel could count as part of the series but would not qualify for a payment; and

(3) is the owner of the shipyard in which the vessels will be constructed. Under the old CDS program, payments were made to the shipowner.

New section 1402(b)(4) stipulates that contracts required under paragraph (3)(B) are binding, except that contracts may be contingent on—

(1) approval of assistance under this title; and

(2) approval of a loan guarantee under title XI, Merchant Marine Act, 1936.

New section 1402(b)(5) requires the Secretary to determine that the purchaser of a vessel—

(1) has the ability, financial resources, and other qualifications necessary to own and operate the vessel in commercial service; and

(2) is a party to the construction contract.

New section 1402(b)(6) requires the Secretary to determine the amount of the series transition payment under section 1403 for each vessel in the series.

New section 1402(c) allows the Secretary to give priority, in the approval of assistance, to a series of vessels—

(1) to the applicant who can construct the smallest number of vessels in the series before construction becomes cost effective. This provision is intended to give the Secretary the au-

thority to accord priority to shipyards that are capable of reaching a competitive world market price with a shorter series of vessels;

(2) which will require the smallest amount of government assistance;

(3) from an applicant which has not received assistance; or

(4) that would contribute to the preservation of a shipyard that would be essential in a time of war or national emergency.

Section 1403. Determination of series transition payments

New section 1403(a) and (b) require the Secretary to determine the amount of a series transition payment for each vessel in a series. Payments are to equal the difference of—

(1) the estimated cost of completing the vessel, minus

(2) a reasonable estimate of the cost of constructing a similar vessel in a foreign shipyard.

The determination of the amount of the assistance payable under this section is predicated on the incorporation of the economic efficiencies of serial production. Multiple production of the same vessel type allows shipyards to incorporate efficiencies and manufacture less expensive vessels as the shipyard progresses on the learning curve. As such, the differential payment between the U.S. price and the world price should decrease in amount as the series progresses until the shipyard has been able fully to incorporate economic efficiencies and produce vessels at the world market price.

The term "cost" as used in this section and in section 1402(a)(2) means cost to the purchaser rather than the actual fabrication cost of the vessel to the shipyard. Since the cost to the purchaser is a net cost, it will automatically take into account any foreign subsidies paid to the foreign shipyard by the country in which it is located, financing costs, and production schedule costs. Thus, the effect of the series transition payment will be to permit the U.S. shipyard to price its vessel to the purchaser on the same basis that the purchaser could buy the vessel in a foreign yard.

Section 1404. Series construction agreement

New section 1404(a) sets forth the general requirements for the series construction agreement.

New section 1404(a)(1) requires the Secretary to enter into a series construction agreement with the owner of the shipyard in which the vessels will be constructed.

New section 1404(a)(2) requires a progress payment schedule.

New section 1404(a)(3) authorizes the Secretary to terminate the agreement if the purchaser cancels its contract and the shipyard is unable to enter into a new contract within the time prescribed in the agreement or the shipyard fails to enter into contracts for all the vessels in the proposed series. This section is intended to allow the U.S. to terminate an agreement when it is apparent that the shipyard will not fulfill the series construction. This will free-up previously obligated funds for use by other applicants.

New section 1404(a)(4) requires the U.S. to continue to fulfill its obligations with respect to vessels for which a contract has been signed.

New section 1404(b)(1) states that payments required under the agreement, including payments for vessels for which a construction contract has not yet been entered into, constitute a binding obligation of the Government.

New section 1404(b)(2) terminates the obligation of the Secretary to make payments under the agreement if the applicant fails to enter into construction contracts for all the vessels in the series within a specified period.

New section 1404(b)(3) allows the Secretary to re-obligate funds from a prior agreement if the agreement was terminated under section 1402(b)(3).

Section 1405. Applications for Assistance

New sections 1405(a) and (b) require an application for assistance to include a detailed description of the vessels in the series, cost estimates, and contracts.

New section 1405(c) requires the Secretary to issue regulations outlining the procedures for submitting applications.

Section 1406. Restriction on Vessel Operations

New sections 1406(1) and (2) prohibit a vessel constructed with series transition payments from operating in the coastwise trades, including mixed coastwise and foreign trade, except coastwise trades authorized under a registry endorsement, such as Guam, American Samoa, Wake Island, Midway Island, or Kingman Reef.

Section 1407. Vessel Design Awards

New section 1407 authorizes the Secretary to make awards to a shipyard on a matching basis for the cost of preparing vessel designs, documents, and bids.

SECTION 11. EFFECTIVE DATE

Section 11 provides that the effective date of the amendments made by this Act is 120 days after the date of enactment.

SECTION 12. REGULATIONS

Section 12(a) provides that, beginning on the date of enactment of the Act, the Secretary may begin prescribing any regulations necessary to carry out the Maritime Security and Competitiveness Act of 1993.

Section 12(b) provides that the Secretary may prescribe interim regulations for the Maritime Security Fleet program established under new section 403 of the Merchant Marine Act, 1936, without complying with the notice and comment requirements of section 553 of title 5, United States Code. However, these interim regulations will expire 270 days after the date of enactment of this Act unless they are superseded by final rules before that date. This is similar to the authority granted to the Federal Maritime Commission in the Shipping Act of 1984.

SECTION 13. EXPANSION OF STANDING FOR MARITIME UNIONS

Section 13 amends section 301 of the Merchant Marine Act, 1936, to grant standing to any duly-elected representative of a

labor union representing officers or crew employed on a U.S.-flag vessel in any challenge to a proposed or final order, action, or rule of the Secretary under the 1936 Act or for deflagging applications submitted under section 9(c)(2) of the Shipping Act, 1916, to the extent that those applications may continue to be made.

SECTION 14. STUDY

Section 14 requires the Secretary to conduct a study of the impact of the Maritime Security and Competitiveness Act of 1993 on the international competitiveness of U.S.-flag vessels and their ability to compete with foreign-flag vessels; whether continuation of the MSF program will assist in the international competitiveness of U.S.-flag vessels; whether the MSF program should be modified; alternatives that the Secretary believes should be made available to U.S.-flag vessels if the MSF program is discontinued; and any other issues related to promoting the international competitiveness of U.S.-flag vessels that the Secretary considers appropriate.

SECTION 15. CARGO PREFERENCE ADMINISTRATIVE REFORM

In section 15(a), Congress finds that cargo preference is an important maritime promotional program, that preservation of the U.S. merchant marine is critical to U.S. economic and national security, that cargo reservation is an effective means of furthering competition among U.S.-flag vessels, and that centralized administration of the cargo preference program in a commercially-based manner will reduce its costs.

Section 15(b) requires that U.S.-flag vessels transporting Government cargoes be engaged under terms no less favorable than the most favorable terms offered to any foreign-flag vessel transporting U.S. Government cargoes. This requirement will ensure that all vessel owners, both U.S. and foreign flag, will be treated equally and provide for a fairer basis for comparing U.S. and foreign-flag rates for transporting cargoes.

Section 15(b) also requires that Government contracts for the transportation of cargoes be based on contracts used for commercial shipments by the private sector. All too often the Government places requirements and burdens on U.S.-flag carriers that a private shipper would never place on a vessel owner. These additional requirements may significantly increase the Government's water transportation costs for these commodities. The Committee believes that the use of standard commercial terms and practices in these contracts will decrease the cost of water transportation of Government cargoes.

Section 15(b) also requires that the heads of appropriate agencies shall transmit to the Secretary of Transportation, within 180 days after the date of enactment of this Act, any recommendations they may have relating to the methodology used by the Secretary to determine whether the rates for U.S.-flag vessels are fair and reasonable. For example, the Secretary may be able to provide incentives for U.S.-flag operators to be more efficient if the Secretary determines the average cost of all U.S.-flag vessels used to transport this type of cargo, rather than doing it on a vessel-by-vessel basis. In this way the least efficient operator's rates may not be considered fair and reasonable and their bids would be disqualified.

The Secretary of Transportation already has broad authority to accomplish these and other administrative reforms under section 901(b)(2) of the Merchant Marine Act, 1936, as amended by the Merchant Marine Act of 1970. That provision was added expressly to bring uniformity to the administration of cargo preference and to ensure that the Maritime Administration, the agency charged with promoting the merchant marine, would oversee a key promotional program. Unfortunately, inconsistency thrives and the promotional aspects of the program are diluted through shipper agency actions, particularly with respect to charter terms and practices. The Committee recognizes that certain agencies believe that charter terms and other transportation aspects are not within the Secretary's authority except to the extent necessary to ensure technical compliance with section 901(b). The Committee believes that such an interpretation is in error. Charter terms and practices can be and have been used to defeat the purpose and function of section 901(b). The Committee believes that it was for that reason that section 901(b)(2) was added in 1970. Section 15 is simply intended to emphasize that authority anew. Centralized management of the cargo preference program by the Secretary of Transportation, combined with the adoption of commercial practices, is a good first step to reduce the cost of the cargo preference program and improve the competitiveness of the U.S. merchant marine.

SECTION 16. WAGES FOR WHICH PREFERRED MARITIME LIEN MAY BE ESTABLISHED

Section 16 amends chapters 111 and 313 of title 46, United States Code, to clarify that the term "wages" also includes any payment described in sections 302(c)(5), (6), (7), (8), or (9) of the Labor Management Relations Act, 1947. For example, wages of the crew of a vessel are considered a preferred maritime lien on a vessel. Section 16 would allow pension payment obligations of a vessel owner to be included in this priority for wage liens since pension payment obligations are simply a deferred wage. This change is consistent with the International Convention on Maritime Liens and Mortgages, 1993.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2151 will have no significant inflationary impact on prices and costs in the operation of the national economy.

Cost of the Legislation

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate by the Committee of the costs which would be incurred in carrying out H.R. 2151. The Committee estimates that the Maritime Security Fleet Program will cost $1.9 billion over 10 years and that the Series Transition Payment Program will cost $2 billion over 10 years.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirements of clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held hearings on H.R. 2151 on May 25, 1993 and July 20, 1993. Pertinent findings are contained in the text of this report.
2. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 2151 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.
3. With respect to the requirement of clause 2(l)(3)(d) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Operations on the subject of H.R. 2151.
4. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has not received a cost estimate for H.R. 2151 from the Director of the Congressional Budget Office.

DEPARTMENTAL REPORTS

The Committee has received no departmental reports on H.R. 2151.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

MERCHANT MARINE ACT, 1936

*   *   *   *   *   *   *

TITLE I—DECLARATION OF POLICY

[SECTION 101. It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United State flag by citizens of the United States insofar as may be practicable, (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and (e) supplemented by efficient facilities for shipbuilding and ship repair. It is hereby declared to be the policy of the United States to foster

the development and encourage the maintenance of such a merchant marine.]

SEC. 101. FOSTERING DEVELOPMENT AND MAINTENANCE OF MERCHANT MARINE.

The Secretary of Transportation shall carry out this Act in a manner that ensures the existence of an operating fleet of United States documented vessels that is—

(1) sufficient to carry the domestic water-borne commerce of the United States and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times;

(2) adequate to serve as a naval auxiliary in time of war or national emergency;

(3) owned and operated by citizens of the United States, to the extent practicable;

(4) composed of the best-equipped, safest, and most modern vessels;

(5) manned with the best trained and efficient personnel who are citizens of the United States; and

(6) supplemented by modern and efficient United States facilities for shipbuilding and ship repair.

* * * * * * *

TITLE III—AMERICAN SEAMEN

SEC. 301. (a) * * *

* * * * * * *

(c) STANDING FOR MARITIME UNION REPRESENTATIVES.—The duly-elected representative of any organization that is certified by the Secretary of Labor as the proper collective bargaining agency for officers or crew employed on any type of United States documented vessel is an interested party in, and has standing to challenge, any proposed or final order, action, or rule of the Secretary of Transportation under this Act or section 9(c)(2) of the Shipping Act, 1916.

* * * * * * *

TITLE IV—MARITIME SECURITY FLEET PROGRAM

SEC. 401. ESTABLISHMENT OF MARITIME SECURITY FLEET.

The Secretary of Transportation shall establish a fleet of active commercial vessels to enhance sealift capabilities and maintain a presence in international commercial shipping of United States documented vessels. The fleet shall be known as the "Maritime Security Fleet".

SEC. 402. COMPOSITION OF FLEET.

The Fleet shall consist of privately owned United States documented vessels for which there are in effect operating agreements.

SEC. 403. VESSELS ELIGIBLE FOR ENROLLMENT IN FLEET.

(a) IN GENERAL.—A vessel is eligible to be enrolled in the Fleet if the Secretary decides, in accordance with this section, that it is eligible. The Secretary may decide whether a vessel is eligible to be enrolled in the Fleet only pursuant to an eligibility decision application submitted to the Secretary by the owner or operator of the vessel. The Secretary shall make such a decision by not later than 90 days after the date of submittal of an eligibility decision application for the vessel by the owner or operator of the vessel.

(b) VESSEL ELIGIBILITY, GENERALLY.—Except as provided in subsection (c), the Secretary shall decide that a vessel is eligible to be enrolled in the Fleet if—

(1) the person that will be the contractor with respect to an operating agreement for the vessel agrees to enter into an operating agreement with the Secretary for the vessel under section 404;

(2) the person that will be a contractor with respect to an operating agreement for the vessel is a citizen of the United States;

(3)(A) the vessel is a United States documented vessel on May 19, 1993;

(B) the vessel is—

(i) in existence on May 19, 1993;

(ii) a United States documented vessel after May 19, 1993; and

(iii) not more than 10 years of age on the date of that documentation;

(C) the vessel is built and, if rebuilt, rebuilt in a United States shipyard;

(D) the vessel is built in a shipyard that is not a foreign subsidized shipyard under a contract entered into before May 19, 1993;

(E)(i) the vessel is built in a foreign shipyard under a contract entered into on or before May 19, 1993; and

(ii) the owner has contracted to build another vessel for enrollment in the Fleet in a United States shipyard that will be delivered within 30 months after the effective date of an operating agreement for the vessel referred to in clause (i), or the Secretary finds and certifies in writing that a United States shipyard cannot sell a vessel to the owner at the world price due to the unavailability of series transition payments under title XIV to build that vessel; or

(F)(i) the vessel is built under a contract entered into after May 19, 1993;

(ii) the proposed owner of the vessel solicited nationwide bids for at least 6 months to build the vessel in a United States shipyard;

(iii) the Secretary finds and certifies in writing that a United States shipyard cannot sell a vessel to the proposed owner at the world price due to the unavailability of series transition payments under title XIV to build that vessel;

(iv) the vessel is delivered from the foreign shipyard within 30 months after the Secretary's certification under clause (iii); and

(v) the vessel is substantially the same type and design as the vessel described in the solicitation made under clause (ii); and

(4) the vessel is self-propelled and is—

(A) a container vessel with a capacity of at least 750 Twenty-foot Equivalent Unite;

(B) a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 Twenty-foot Equivalent Units;

(C) a LASH vessel with a barge capacity of at least 75 barges;

(D) a vessel subject to a contract under title VI on May 19, 1993; or

(E) any other type of vessel that is determined by the Secretary to be suitable for use by the United States for national defense or military purposes in time of war or national emergency.

(c) DETERMINATIONS OF ELIGIBILITY.—

(1) DETERMINATIONS REQUIRED.—The Secretary shall make determinations under subsection (b) for each vessel for which an eligibility decision application is submitted under this section.

(2) DETERMINATION REGARDING CERTIFICATION.—The Secretary shall—

(A) make the finding and certification under paragraph (3)(E)(ii) for a vessel, or determine not to, by not later than 60 days after the date of receipt of an eligibility decision application for the vessel; and

(B) make the finding and certification under paragraph (3)(F)(iii) for a vessel, or determine not to, by not later than 60 days after the closing date of the solicitation pursuant to paragraph (3)(F)(ii) for the vessel.

(3) WRITTEN EXPLANATION.—The Secretary shall provide to the person that submits an eligibility application for a vessel a written explanation of any decision that the vessel is not eligible for enrollment in the Fleet.

(d) LIST OF ELIGIBLE VESSELS.—

(1) IN GENERAL.—The Secretary shall maintain a list of vessels that the Secretary decides in accordance with this section are eligible to be enrolled in the Fleet.

(2) REMOVAL OF VESSELS FROM LIST.—The Secretary shall remove a vessel from the list maintained under this subsection, and the vessel shall not be an eligible vessel for purposes of this title—

(A) at any time that the conditions for eligibility under subsection (b) are not fulfilled for the vessel; or

(B) if the status of the person who submitted an eligibility decision application for the vessel, as owner or operator of the vessel, changes and after that change—

(i) the owner or operator of the vessel fails to submit a new eligibility decision application for the vessel; or

(ii) such an application is not approved by the Secretary.

SEC. 404. OPERATING AGREEMENTS, GENERALLY.

(a) REQUIREMENT FOR ENROLLMENT OF VESSELS.—A vessel may be enrolled in the Fleet only if it is an eligible vessel for which the owner or operator of the vessel applies for and enters into an operating agreement with the Secretary under this section.

(b) PRIORITY FOR AWARDING AGREEMENTS.—Subject to the availability of appropriations, the Secretary shall entsr into operating agreements according to the following priority:

(1) VESSELS OWNED BY CITIZENS.—

(A) PRIORITY.—First, for any vessel that is—

(i) owned and operated by persons who are citizens of the United States under section 2 of the Shipping Act, 1916; or

(ii) less than 5 years of age and owned and operated by a corporation that is—

(I) eligible to document a vessel under chapter 121 of title 46, United States Code; and

(II) affiliated with a corporation operating or managing other United States documented vessels for the Secretary of Defense or chartering other vessels to the Secretary of Defense.

(B) LIMITATION ON NUMBER OF OPERATING AGREEMENTS.—The total number of operating agreements that may be entered into by a person under the priority in subparagraph (A)—

(i) for vessels described in subparagraph (A)(i), may not exceed the sum of—

(I) the number of United States documented vessels the person operated in the foreign commerce of the United States (except mixed coastwise and foreign commerce) on January 1, 1993; and

(II) the number of United States documented vessels the person chartered to the Secretary of Defense on that date; and

(ii) for vessels described in subparagraph (A)(ii), may not exceed 4 vessels.

(C) TREATMENT OF RELATED PARTIES.—For purposes of subparagraph (B), a related party with respect to a person shall be treated as the person.

(2) OTHER VESSELS OWNED BY CITIZENS AND GOVERNMENT CONTRACTORS.—To the extent that amounts are available after applying paragraph (1), any vessel that is—

(A) owned and operated by—

(i) citizens of the United States under section 2 of the Shipping Act, 1916, that have not been awarded an operating agreement under the priority established under paragraph (1); or

(ii)(I) eligible to document a vessel under chapter 121 of title 46, United States Code; and

(II) affiliated with a corporation operating or managing other United States documented vessels for the Secretary of Defense or chartering other vessels to the Secretary of Defense; and

(B) on the list maintained under section 403(d).

(3) OTHER VESSELS.—To the extent that amounts are available after applying paragraphs (1) and (2), any vessel that is—

(A) owned and operated by a person that is eligible to document a vessel under chapter 121 of title 46, United States Code; and

(B) on the list maintained under section 403(d).

(c) AWARD OF AGREEMENTS.—

(1) IN GENERAL.—The Secretary shall award operating agreements within each priority under subsection (b) (1), (2), and (3) under regulations prescribed by the Secretary.

(2) NUMBER OF AGREEMENTS AWARDED.—Regulations under paragraph (1) shall provide that if appropriated amounts are not sufficient for operating agreements for all vessels within a priority under subsection (b) (1), (2), or (3), the Secretary shall award to each person submitting a request a number of operating agreements that bears approximately the same ratio to the total number of vessels in the priority, as the amount of appropriations available for operating agreements for vessels in the priority bears to the amount of appropriations necessary for operating agreements for all vessels in the priority.

(3) TREATMENT OF RELATED PARTIES.—For purposes of paragraph (2), a related party with respect to a person shall be treated as the person.

(d) TIME LIMIT FOR DECISION ON ENTERING OPERATING AGREEMENT.—The Secretary shall enter an operating agreement for a vessel within 90 days after making the decision that the vessel is eligible to be enrolled in the Fleet under section 403(a).

(e) EFFECTIVE DATE OF OPERATING AGREEMENT.—The effective date of an operating agreement may not be later than the later of—

(1) the date the vessel covered by the agreement enters into the trade required under section 405(a)(1)(A);

(2) the date the vessel covered by the agreement is withdrawn from an operating differential subsidy contract under title VI;

(3) the date of termination of an operating differential subsidy contract under title VI that applies to the vessel; or

(4) the date of the expiration or termination of a charter of the vessel to the United States Government that was entered into before the date of the enactment of the Maritime Security and Competitiveness Act of 1993.

(f) EXPIRATION OF OFFERS FOR AGREEMENTS.—Unless extended by the Secretary, an offer by the Secretary to enter into an operating agreement under this section expires 120 days after the date the offer is made.

(g) LENGTH OF AGREEMENTS.—An operating agreement is effective for 10 years from the effective date of the agreement.

(h) REPAYMENT REQUIREMENTS.—

(1) NONCOMPLIANCE.—A contractor that fails to comply with the terms of an operating agreement shall be liable to the United States Government for all amounts received by the contractor as paymente for the vessel under this title with respect to the period of that noncompliance, and for interest on those amounts determined under paragraph (3).

(2) FAILURE TO OPERATE REPLACEMENT VESSEL.—A contractor under an operating agreement that covers a vessel that is 25 or

more years of age and that fails to replace the vessel as provided in section 405(a)(3) (A) or (B) shall be liable to the United States Government for all amounts received by the contractor as payments for the vessel under this title with respect to periods after the date the vessel becomes 25 years of age, and for interest on those amounts determined under paragraph (3).

(3) DETERMINATION OF INTEREST.—Interest under paragraphs (1) and (2) shall be at an annual rate equal to 125 percent of the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for auctions of 3 month United States Treasury bills settled during the quarter preceding the date of the failure to comply or the failure to replace, respectively.

(i) PROHIBITION ON AGREEMENTS FOR CERTAIN VESSELS.—The Secretary may not enter into an operating agreement for a vessel that is owned or operated by a person that was a contractor for the vessel under an operating agreement terminated under section 405(a)(10), before the end of the term of the agreement that was terminated.

(j) BINDING OBLIGATION OF GOVERNMENT.—An operating agreement constitutes a contractual obligation of the United States Government to pay the amounts provided for under that agreement.

SEC. 405. TERMS OF OPERATING AGREEMENTS.

(a) OPERATING AGREEMENT REQUIREMENTS.—An operating agreement shall, during the effective period of the agreement, provide the following:

(1) OPERATION AND DOCUMENTATION.—The vessel covered by the operating agreement—

(A) shall be operated in the foreign trade or domestic trade allowed under a registry endorsement for the vessel issued under section 12105 of title 46, United States Code;

(B) may not be operated in the coastwise trade of the United States or in mixed coastwise and foreign trade, except for coastwise trade allowed under a registry endorsement issued for the vessel under section 12105 of title 46, United States Code; and

(C) shall be documented under chapter 121 of title 46, United States Code.

(2) ANNUAL PAYMENTS.—

(A) IN GENERAL.—The Secretary shall pay the contractor, in accordance with this subsection, the following amounts for each fiscal year in which the vessel is operated in accordance with the agreement:

(i) For fiscal year 1994, $2,300,000.

(ii) For each fiscal year thereafter, $2,100,000.

(B) LIMITATION.—The Secretary shall not pay any amount pursuant to this paragraph for any day in which the vessel is—

(i) under a charter to the United States Government that was entered into before the date of the enactment of the Maritime Security and Competitiveness Act of 1993; or

(ii) covered by an operating differential subsidy contract under title VI.

(3) TERMINATION BASED ON AGE OF VESSEL.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the operating agreement shall terminate on the later of—

(i) the date the vessel covered by the agreement is 25 years of age, or

(ii) the date the vessel covered by the agreement is 30 years of age, in the case of an agreement that covers a vessel that is repowered in a United States shipyard after the effective date of the operating agreement and before the vessel is 25 years of age.

(B) EXCEPTION.—The operating agreement shall not terminate under subparagraph (A) if the contractor agrees to acquire a replacement for the vessel from among vessels on the list maintained under section 403(d), and—

(i) in the case of a vessel to be replaced with a new vessel, the contractor enters into a binding contract with a shipyard that requires the shipyard to deliver the replacement vessel by not later than 30 months after the later of the date the operating agreement is entered into or the date the operating agreement would otherwise terminate under subparagraph (A); or

(ii) in the case of a vessel to be replaced with an existing vessel, the contractor acquires the replacement vessel from among vessels on the list maintained under section 403(d), by not later than 12 months after the later of the date the operating agreement is entered into or the date the operating agreement would otherwise expire under subparagraph (A).

(4) AVAILABILITY OF VESSEL.—

(A) IN GENERAL.—On a request of the President during time of war or national emergency or when considered by the President, acting through the Secretary in consultation with the Secretary of Defense, to be necessary in the interest of national security, and subject to subparagraph (B), the contractor as soon as practicable shall, as specified by the Secretary—

(i) make the vessel covered by the agreement available to the Secretary under a time charter; or

(ii) provide space on the vessel covered by the agreement to the Secretary on a guaranteed basis.

(B) CONDITION FOR CHARTER.—The Secretary shall allow a contractor to comply with this paragraph by providing space on a vessel under subparagraph (A)(ii) unless the Secretary determines that it is necessary in the interest of national security that the contractor make the vessel available under a time charter.

(5) DELIVERY OF VESSEL.—The contractor shall deliver a vessel to the Secretary pursuant to a time charter under paragraph (4)(A)(i), as specified in the request for the vessel—

(A) at the first port in the United States the vessel is scheduled to call after the date of receipt of the request;

(B) at the port in the United States to which the vessel is nearest on the date of receipt of the request; or

(C) in any other reasonable manner authorized by the agreement and specified in the request.

(6) DELIVERY COSTS.—In addition to amounts paid under paragraph (2), the Secretary shall reimburse the contractor for costs incurred by the contractor in delivering the vessel covered by the agreement to the Secretary in accordance with the agreement.

(7) COMPENSATION.—In addition to amounts paid under paragraph (2), the Secretary shall pay the contractor, as provided in the operating agreement, reasonable compensation at reasonable commercial rates for the period of time the vessel is chartered or the contractor provides space on the vessel under paragraph (4).

(8) REQUIRED OPERATION.—

(A) IN GENERAL.—A vessel covered by the operating agreement shall be operated in the trade required under paragraph (1), and under conditions eligible for payment under this title, for at least 320 days in a fiscal year, including days during which the vessel is dry-docked, surveyed, inspected, or repaired.

(B) REDUCTION IN PAYMENTS.—If a vessel operates in the trade required under paragraph (1), and under conditions eligible for payment under this title, for less than the time required under subparagraph (A), the payments required under paragraph (2) shall be reduced on a pro-rata basis to reflect the lesser time in that operation.

(9) SUBSTITUTION OF VESSELS AUTHORIZED.—The contractor may substitute for the vessel covered by the agreement another vessel on the list maintained under section 403(d).

(10) OTHER TERMINATION.—The operating agreement shall terminate if—

(A) in the case of a vessel that transports less than 12,000 tons of bulk cargo under the agreement—

(i) the vessel covered by the agreement is not operated under an operating agreement for one year; and

(ii) a substitute for that vessel is not operated under the agreement during that year; or

(B) the contractor notifies the Secretary that the contractor intends to terminate the agreement, by not later than 60 days before the effective date of the termination.

(b) PAYMENTS.—

(1) IN GENERAL.—The amount required to be paid by the Secretary each year to a contractor under an operating agreement pursuant to subsection (a)(2)—

(A) shall be paid at a pro rated amount at the beginning of each month in equal installments; and

(B) except as provided in paragraph (2), may not be reduced by reason of operation of the vessel covered by the agreement to carry civilian or military preference cargoes under—

(i) section 901(a), 901(b), or 901b;

(ii) section 2631 of title 10, United States Code; or

(iii) the Act of March 26, 1934 (48 Stat. 500).

(2) REDUCTION FOR PREFERENCE CARGO.—A contractor with respect to a vessel may not receive any payment under this title for any day in which the vessel is engaged in transporting more than 12,000 tons of preference cargo described in paragraph (1)(B) that is bulk cargo (as defined in section 3 of the Shipping Act of 1984).

(c) REDELIVERY OF VESSELS.—The Secretary shall, upon the termination of the need for which a vessel is delivered under subsection (a)(4), return the vessel to the contractor—

(1) at a place that is mutually agreed upon by the Secretary of Defense and the contractor; and

(2) in the condition in which it was delivered to the Secretary, excluding normal wear and tear.

(d) TRANSFER OF OPERATING AGREEMENTS.—A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any other person that is a citizen of the United States, after notification of the Secretary in accordance with regulations prescribed by the Secretary, unless the transfer is disapproved by the Secretary within 90 days after the date of that notification. A transfer shall not be effective before the end of that 90-day period. A person to whom an agreement is transferred may receive payments from the Secretary under the agreement only if the vessel to be covered by the agreement after the transfer is on the list maintained under section 403(d).

SEC. 406. NONCONTIGUOUS TRADE RESTRICTIONS.

(a) PROHIBITION.—

(1) IN GENERAL.—Except as provided in this section, a contractor may not receive any payment under this title—

(A) if the contractor or a related party with respect to the contractor, directly or indirectly owns, charters, or operates a vessel engaged in the transportation of cargo in noncontiguous trade other than in accordance with a waiver under subsection (b), (c), or (d); or

(B) if the contractor is authorized to operate a vessel in noncontiguous trade under such a waiver, and there is a—

(i) material change in the domestic ports served by the contractor from the ports permitted to be served under the waiver;

(ii) material increase in the annual number or the frequency of sailings by the contractor from the number or frequency permitted under the waiver; or

(iii) material increase in the annual volume of cargo carried or annual capacity utilized by the contractor from the annual volume of cargo or annual capacity permitted under the waiver.

(2) LIMITATIONS ON PROHIBITION.—Paragraph (1) applies to a contractor only in the years specified for payments under the operating agreement entered into by the contractor.

(b) GENERAL WAIVER AUTHORITY.—

(1) IN GENERAL.—Except as provided in subsection (c), the Secretary may waive, in writing, the application of subsection (a) to a contractor pursuant to an application submitted in accordance with this subsection, unless the Secretary finds that—

(A) the waiver would result in unfair competition to any person that operates vessels as a carrier of cargo in a service exclusively in the noncontiguous trade for which the waiver is applied;

(B) subject to paragraph (6), existing service in that noncontiguous trade is adequate; or

(C) the waiver will result in prejudice to the objects or policy of this title or Act.

(2) TERMS OF WAIVER.—Any waiver granted by the Secretary under this subsection shall state—

(A) the domestic ports permitted to be served;

(B) the annual number or frequency of sailings that may be provided; and

(C)(i) the annual volume of cargo permitted,

(ii) for containerized or trailer service, the annual 40-foot equivalent unit shipboard container and trailer or vehicle or general cargo capacity permitted, or

(iii) for tug and barge service, the annual barge house cubic foot capacity and the annual barge deck general cargo capacity, or 40-foot equivalent unit container, trailer, or vehicle capacity, permitted.

(3) APPLICATIONS FOR WAIVERS.—An application for a waiver under this subsection may be submitted by a contractor and shall describe, as applicable, the nature and scope of—

(A) the service proposed to be conducted in a noncontiguous trade under the waiver; or

(B) any proposed material change or increase in a service in a noncontiguous trade permitted under a previous waiver.

(4) ACTION ON APPLICATION AND HEARING.—

(A) NOTICE AND PROCEEDING.—Within 30 days after receipt of an application for a waiver under this subsection, the Secretary shall—

(i) publish a notice of the application; and

(ii) begin a proceeding on the application under section 554 of title 5, United States Code, to receive—

(I) evidence of the nature, quantity, and quality of the existing service in the noncontiguous trade for which the waiver is applied;

(II) a description of the proposed service or proposed material change or increase in a previously permitted service;

(III) the projected effect of the proposed service or proposed material change or increase in existing service; and

(IV) recommendations on conditions that should be contained in any waiver for the proposed service or material change or increase.

(B) INTERVENTION.—An applicant for a waiver under this subsection, and any person that operates cargo vessels in the noncontiguous trade for which a waiver is applied and that has any interest in the application, may intervene in the proceedings on the application.

(C) HEARING.—Before deciding whether to grant a waiver under this subsection, the Secretary shall hold a public hearing in an expeditious manner, reasonable notice of which shall be published.

(5) DECISION.—The Secretary shall complete all proceedings and hearings on an application under this subsection and issue a decision on the record within 90 days after receipt of the final briefs submitted for the record.

(6) LIMITATION ON CONSIDERATION OF CERTAIN EXISTING SERVICE.—

(A) LIMITATION.—In determining whether to grant a waiver under this subsection for noncontiguous trade with Hawaii, the Secretary shall not consider the criterion set forth in paragraph (1)(B) if a qualified operator—

(i) is a contractor, and

(ii) operates 4 or more vessels in foreign commerce in competition with another contractor.

(B) QUALIFIED OPERATOR.—In this paragraph, the term "qualified operator" means a person that on July 1, 1992, offered service as an operator of containerized vessels, trailer vessels, or combination container and trailer vessels in noncontiguous trade with Hawaii and the Johnston Islands (including a related party with respect to the person).

(c) WAIVERS FOR EXISTING NONCONTIGUOUS TRADE OPERATORS.—

(1) IN GENERAL.—The Secretary shall waive the application of subsection (a) to a contractor pursuant to an application submitted in accordance with this subsection if the Secretary finds that the contractor, or a related party or predecessor in interest with respect to the contractor—

(A) engaged in bona fide operation of a vessel as a carrier of cargo by water—

(i) in a noncontiguous trade on July 1, 1992; or

(ii) in furnishing seasonal service in a season ordinarily covered by its operation, during the 12 calendar months preceding July 1, 1992; and

(B) has operated in that service since that time, except for interruptions of service resulting from military contingency or over which the contractor (or related party or predecessor in interest) had no control.

(2) TERMS OF WAIVER.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the level of service permitted under a waiver under this subsection shall be the level of service provided by the applicant (or related party or predecessor in interest) in the relevant noncontiguous trade during, for year-round service, the 6 calendar months preceding July 1, 1992, or for seasonal service, the 12 calendar months preceding July 1, 1992, determined by—

(i) the domestic ports called;

(ii) the number of sailings actually made, except as to interruptions in the service in the noncontiguous trade resulting from military contingency or over which the applicant (or related party or predecessor in interest) had no control; and

(iii) the volume of cargo carried or, for containerized or trailer service, the 40-foot equivalent unit shipboard container, trailer, or vehicle or general cargo capacity employed, or, for tug and barge service, the barge house cubic foot capacity and barge deck general cargo capacity or 40-foot equivalent unit container, trailer, or vehicle capacity, employed.

(B) CERTAIN CONTAINERIZED VESSELS.—If an applicant under this subsection was offering service as an operator of containerized vessels in noncontiguous trades with Hawaii, Puerto Rico, and Alaska on July 1, 1992, a waiver under this subsection for the applicant shall permit a level of service consisting of—

(i) 104 sailings each year from the West Coast of the United States to Hawaii with an annual capacity allocated to the service of 75 percent of the total capacity of the vessels employed in the service on July 1, 1992;

(ii) 156 sailings each year in each direction between the East Coast or Gulf Coast of the United States and Puerto Rico with an annual capacity allocated to the service of 75 percent of the total capacity of its vessels employed in the service on the date of the enactment of the Maritime Security and Competitiveness Act of 1993; and

(iii) 103 sailings each year in each direction between Washington and Alaska with an annual capacity allocated to the service in each direction of 100 percent of the total capacity of its vessels employed in the service on July 1, 1992.

(C) CERTAIN TUGS AND BARGES.—If an applicant under this subsection was offering service as an operator of tugs and barges in noncontiguous trades with Hawaii, Puerto Rico, and Alaska on July 1, 1992, a waiver under this subsection for the applicant shall permit a level of service consisting of—

(i) 17 sailings each year in each direction between ports in Washington, Oregon, and Northern California and ports in Hawaii with an annual barge house cubic foot capacity and annual barge deck 40-foot equivalent unit container capacity in each direction of 100 percent of the total of the capacity of its vessels employed in the service during the 6 calendar months preceding July 1, 1992, annualized;

(ii) 253 sailings each year in each direction between the East Coast or Gulf Coast of the United States and Puerto Rico with an annual 40-foot equivalent unit container or trailer capacity equal to 100 percent of the capacity of its barges employed in the service on the date of the enactment of the Maritime Security and Competitiveness Act of 1993;

(iii) 37 regularly scheduled tandem tow rail barge sailings and 10 additional single tow rail barge sailings each year in each direction between Washington and the Alaskan port range between and including

Anchorage and Whittier with an annual capacity allocated to the service in each direction of 100 percent of the total rail car capacity of its vessels employed in the service on July 1, 1992;

(iv) 8 regularly scheduled single tow sailings each year in each direction between Washington and points in Alaska (not including the port range between and including Anchorage and Whittier, except occasional deviations to discharge incidental quantities of cargo) with an annual capacity allocated to the service in each direction of 100 percent of the total capacity of its vessels employed in the service on July 1, 1992; and

(v) unscheduled, contract carrier tug and barge service between points in Alaska south of the Arctic Circle not served by the common carrier service permitted under clause (iii) and points in the contiguous 48 States, with an annual capacity allocated to that service not exceeding 100 percent of the total capacity of the equipment that was dedicated to service south of the Arctic Circle on July 1, 1992, and actually utilized in that service in the 2-year period preceding that date.

(D) ANNUALIZATION.—Capacity otherwise required by this paragraph to be permitted under a waiver under this subsection shall be annualized if not a seasonal service.

(E) ADJUSTMENTS.—

(i) Each written waiver granted by the Secretary under this subsection shall contain a statement that the annual capacity permitted under this waiver in any direction shall increase for a calendar year by the percentage of increase during the preceding calendar year in the real gross product of the State or territory to which goods are transported in the noncontiguous trade covered by the waiver, or its equivalent economic measure as determined by the Secretary if the real gross product is not available, and that the increase shall not be considered to be a material change or increase for purposes of subsection (a)(1)(B).

(ii) The increase in permitted capacity under clause (i) in the noncontiguous trade with Alaska shall be allowed only to the extent the operator actually uses that increased capacity to carry cargo in the permitted service in the calendar year immediately following the preceding increase in gross product. However, if an operator operating exclusively containerized vessels in that trade on July 1, 1992, carries an average loan factor of at least 90 percent of permitted capacity (including the capacity, if any, both authorized and used under the previous sentence) during 9 months of any one calendar year, than in the next following calendar year and thereafter, the requirement that additional capacity must be used in the immediately following year does not apply.

(F) SERVICE LEVELS NOT INCREASED BY TERMINATION OF AGREEMENT.—The termination of an operating agreement

under section 405(a)(10) shall not be considered to increase a level of service specified in subparagraph (A), (B), or (C) if the contractor under the agreement enters into another operating agreement after that termination.

(3) APPLICATIONS FOR WAIVERS.—For a waiver under this subsection a contractor shall submit to the Secretary an application certifying the facts required to be found under paragraph (1) (A) or (B), as applicable.

(4) ACTION ON APPLICATION.—

(A) NOTICE.—The Secretary shall publish a notice of receipt of an application for a waiver under this subsection within 30 days after receiving the application.

(B) HEARING PROHIBITED.—The Secretary may not conduct a hearing on an application for a waiver under this subsection.

(C) SUBMISSION OF COMMENTS.—The Secretary shall give every person operating a cargo vessel in a noncontiguous trade for which a waiver is applied for under this subsection and who has any interest in the application a reasonable opportunity to submit comments on the application and on the description of the service that would be permitted by any waiver that is granted by the Secretary under the application.

(5) DECISION ON APPLICATION.—Subject to the time required for publication of notice and for receipt and evaluation of comments by the Secretary, an application for a waiver under this subsection submitted at the same time the applicant applies for inclusion of a vessel in the Fleet shall be granted in accordance with the level of service determined by the Secretary under this subsection by not later than the date on which the Secretary offers to the applicant an operating agreement with respect to that vessel.

(6) CHANGE OR INCREASE IN SERVICE.—Any material change or increase in a service that is subject to a waiver under this subsection is not authorized except to the extent the change or increase is permitted by a waiver under subsection (b).

(d) EMERGENCY WAIVER.—Notwithstanding any other provision of this section, the Secretary may, without hearing, temporarily waive the application of subsection (a)(1)(B) if the Secretary finds that a material change or increase is essential in order to respond adequately to (1) an environmental or natural disaster or emergency, or (2) another emergency declared by the President. Any waiver shall be for a period of not to exceed 45 days, except that a waiver may be renewed for 30-day periods if the Secretary finds that adequate capacity continues to be otherwise unavailable.

(e) ANNUAL REPORT ON WAIVERS.—Each waiver under this section shall require the person who is granted the waiver to submit to the Secretary each year an annual report setting forth for the service authorized by the waiver—

(1) the ports served during the year;

(2) the number or frequency of sailings performed during the year; and

(3) the volume of cargo carried or, for containerized or trailer service, the annual 40-foot equivalent unit shipboard container,

trailer, or vehicle capacity utilized during the year, or for tug and barge service, the annual barge house and barge deck capacity utilized during the year.

(f) DEFINITIONS.—In this section—

(1) the term "noncontiguous trade" means trade between—

(A) a point in the contiguous 48 States; and

(B) a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle; and

(2) the term "related party" means—

(A) a holding company, subsidiary, affiliate, or associate of a contractor; and

(B) an officer, director, agency, or other executive of a contractor or of a person referred to in subparagraph (A).

SEC. 407. OPERATING COMPETING FOREIGN VESSELS.

(a) IN GENERAL.—Except as provided in this section, a contractor (including a related party with respect to a contractor) may not own, charter, or operate a foreign vessel in competition with a United States documented vessel.

(b) EXCEPTION.—Subsection (a) does not apply to a foreign vessel if—

(1)(A) the contractor has applied for an operating agreement for a vessel to be operated in the same service as the foreign vessel; and

(B) the Secretary, due to the unavailability of funds, does not award an operating agreement to that contractor for a United States documented vessel for that service within 60 days after that application is submitted;

(2) the Secretary, after notice and an opportunity for a hearing, under special circumstances, and for good cause shown, waives subsection (a) for the contractor for a specified period of time; or

(3) the foreign vessel was operated by that contractor on August 5, 1993.

SEC. 408. FUNDING FOR OPERATING AGREEMENTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary any amounts necessary to liquidate obligations undsr operating agreements.

(b) TRANSFER OF BALANCES FROM OPERATING DIFFERENTIAL SUBSIDY PROGRAM.—Any amounts otherwise available for operating differential subsidy contracts under title VI that are no longer required for those contracts are available, until expended, for operating agreements.

SEC. 409. DEFINITIONS.

In this title:

(1) CONTRACTOR.—The term "contractor" means an owner or operator of a vessel that enters into an operating agreement for the vessel with the Secretary.

(2) ELIGIBILITY DECISION APPLICATION.—The term "eligibility decision application" means an application for a decision by the Secretary under section 403 that a vessel is eligible to be enrolled in the Fleet.

(3) ELIGIBLE VESSEL.—The term "eligible vessel" means a vessel that the Secretary decides under section 403 is eligible to be enrolled in the Fleet.

(4) FLEET.—The term "Fleet" means the Maritime Security Fleet established under section 402.

(5) OPERATING AGREEMENT.—The term "operating agreement" means an operating agreement entered into by the Secretary under section 404.

(6) RELATED PARTY.—The term "related party" means, with respect to a contractor or other person—

(A) a holding company, subsidiary, affiliate, or association of the person; and

(B) an officer, director, other executive, or agent of the person or of an entity referred to in paragraph (1).

(7) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(8) UNITED STATES DOCUMENTED VESSEL.—The term "United States documented vessel" means a vessel that is documented under chapter 121 of title 46, United States Code.

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TITLE V—CONSTRUCTION-DIFFERENTIAL SUBSIDY

SEC. 501. (a) * * *

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SEC. 506. *(a)* Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the state of Hawaii, or an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Secretary of Transportation that proportion of one twenty-fifth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The Secretary may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Secretary may determine that such transfer is necessary or appropriate to carry out the purposes of this Act. Such consent shall be conditioned upon the agreement by the owner to pay to the Secretary upon such terms and conditions as it may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Secretary as such temporary period bears to the entire economic life of the vessel. No operating-differential subsidy shall be paid for the operation of such vessel for such temporary period.

(b) For purposes of this section, any liquid or dry bulk cargo vessel for which operating-differential subsidy is required to be paid

under a contract under title VI that is in force on May 19, 1993, shall, effective upon the termination date of the contract (as set forth in the contract as in effect on May 19, 1993, be deemed to have reached the age of 20 years.

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SEC. 512. LIMITATION ON RESTRICTIONS.

Notwithstanding any other provision of law or contract, all restrictions and requirements under sections 503, 506, and 802 applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.

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TITLE VI—OPERATING-DIFFERENTIAL SUBSIDY

SEC. 601. (a) * * *

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SEC. 616. LIMITATION ON APPLICATION OF RESTRICTIONS ON OPERATIONS.

(a) Sections 605(c) and 804, this section, and the essential service requirements in section 601(a) and 603(a), do not apply to a contractor if—

(1) the contractor submits an eligibility decision application to the Secretary under title IV for all of the vessels operated by the contractor under an operating-differential subsidy contract; and

(2) all of those vessels for which operating agreements are offered by the Secretary under title IV are enrolled in the Maritime Security Fleet.

(b)(1) With respect to the operations of a contractor receiving operating-differential subsidy for liner vessels on a particular trade route, as defined in that contractor's contract in effect on January 1, 1993, that operator shall not be subject to the restrictions of either section 605(c) or section 804 with respect to operations on that trade route, commencing at such time as—

(A) that operator transfers 50 percent or more of its vessels that were operating on that trade route as of January 1, 1993, from the operating-differential subsidy program to the Maritime Security Fleet program under title IV; or

(B) that operator is the only contractor receiving operating-differential subsidy with respect to that trade route, and all other United States-flag liner operators operating a vessel on that trade route are operating on that trade route only vessels for which there are in effect operating agreements under title IV.

(2) With respect to any contractor receiving operating-differential subsidy for liner vessels on Maritime Administration Essential Trade Route 1, 2, or 8, that operator shall not be subject to the restrictions of either section 605(c) or section 804 with respect to operations on any of those trade routes, commencing at such time as payments begin to accrue on behalf of another United States-flag

operator that is a party to an operating agreement under title IV which provides liner service on Maritime Administration Essential Trade Route 2.

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TITLE VIII—CONTRACT PROVISIONS

SEC. 801. * * *

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SEC. 809. (a) Contracts under this Act shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, Great Lakes, and Pacific ports of the United States. In order to assure equitable treatment for each range of ports referred to in the preceding sentence, not less than 10 percent of the funds appropriated for construction-differential subsidy and operating-differential subsidy pursuant to this Act or any law authorizing funds for the purposes of this Act shall be allocated to each such port range: *Provided, however,* That such allocation shall apply to the extent that subsidy contracts are approved by the Secretary of Transportation. For the purposes of this section and section 211(a), the Secretary shall establish trade routes, services, or lines that take into account the seasonal closure of the Saint Lawrence Seaway and provide for alternate routing of ships via a different range of ports during that closure so as to maintain continuity of service on a year-round basis. For the purpose of section 605(c), such an alternate routing via a different range of ports shall be deemed to be service from Great Lakes ports, provided such alternative routing is based upon receipt or delivery of cargo at Great Lakes-Saint Lawrence Seaway ports under through intermodal bills of lading. The Secretary shall include in the annual report pursuant to section 208 of this Act a detailed report (1) describing the actions that have been taken pursuant to this Act to assure insofar as possible that direct and adequate service is provided by United States-flag commercial vessels to each range of ports referred to in this section; and (2) including any recommendations for additional legislation that may be necessary to achieve the purpose of this section. In awarding contracts under this Act, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested. *This section shall not apply to contracts under title IV or funds for such contracts.*

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TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. (a) * * *

(b)(1) Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and

practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent that such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographical areas: *Provided*, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies: *And provided further*, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise modify the provisions of Public Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended. [For purposes of this section, the term "privately owned United States-flag commercial vessels" shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States, for a period of three years: *Provided, however*, That the provisions of this amendment shall not apply where, (1) prior to the enactment of this amendment, the owner of a vessel, or contractor for the purchase of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment.]

* * * * * * *

(3) In this section and section 901b, the term "privately owned United States-flag commercial vessel" means a privately owned vessel that is documented under chapter 121 of title 46, United States Code, that—

(A) was built in the United States;

(B) was documented under chapter 121 of title 46, United States Code, before May 19, 1993;

(C) does not transport under section 901b or this section on any voyage more than 12,000 tons of bulk cargo (as defined in section 3 of the Shipping Act of 1984), and—

(i) was built in a foreign shipyard under a contract entered into on or before May 19, 1993;

(ii) is built under a contract entered into after that date, in a foreign shipyard that on the date the contract is entered is not a foreign subsidized shipyard; or

(iii) is subject to an operating agreement under title IV;

(D)(i) is built under a contract entered into after May 19, 1993, in a foreign shipyard that on the date the contract was entered is not a foreign subsidized shipyard; and

(ii) has not been documented in a foreign country before it is documented under chapter 121 of title 46, United States Code; or

(E) has been documented under chapter 121 of title 46, United States Code, for at least 3 consecutive years, did not transport any equipment, materials, or commodities during that period under this section or section 901b, and—

(i) was built in a foreign shipyard under a contract entered into before May 19, 1993; or

(ii) is built under a contract entered into after that date, in a foreign shipyard that on the date the contract was entered is not a foreign subsidized shipyard.

(4) In paragraph (3), the term "built" includes rebuilt.

* * * * * * *

(d) A privately owned United States-flag commercial vessel transporting any equipment, materials, or commodities under this section or section 901b shall be engaged under terms no less favorable than the most favorable terms offered to any foreign-flag vessel transporting equipment, materials, or commodities under this section or section 901b.

(e) A contract for the ocean transportation of any equipment, materials, or commodities under this section or section 901b, to the extent the Secretary of Transportation determines necessary to further the purposes of this section and section 901b, shall be based on contracts used for commercial shipments.

(f) The Secretary of Transportation shall participate in negotiations relating to agreements with recipient countries for equipment, materials, or commodities subject to this section or section 901b to the extent the Secretary considers to be necessary to ensure agreement provisions relating to or affecting the transportation of such equipment, materials, or commodities permit fair and reasonable transportation services to be provided.

(g) No later than 180 days after the date of the enactment of the Maritime Security and Competitiveness Act of 1993, the heads of appropriate Federal agencies, or their representatives, shall transmit to the Secretary of Transportation recommendations relating to the methodology used by the Secretary of Transportation to determine whether rates for United States-flag vessels are fair and reasonable in compliance with section 901(b) and will achieve the policy objectives of this Act.

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SHIPMENT REQUIREMENTS FOR CERTAIN EXPORTS SPONSORED BY THE DEPARTMENT OF AGRICULTURE

SEC. 901b. (a) * * *

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(f) For the definition of the term "privately owned United States-flag commercial vessel", see section 901(b)(3).

SEC. 905. When used in this Act—

[(a) The words "foreign commerce" or "foreign trade" mean commerce or trade between the United States, its Territories or possessions, or the District of Columbia, and a foreign country, except that in the context of section 607 of this Act concerning capital construction funds and in the context of title V of this Act concerning construction-differential subsidy, the said words "foreign commerce" or "foreign trade" shall also include, in the case of liquid and dry bulk cargo carrying services, trading between foreign ports in accordance with normal commercial bulk shipping practices in such manner as will permit U.S.-flag bulk vessels freely to compete with foreign-flag bulk carrying vessels in their operation or in competing for charters, subject to rules and regulations promulgated by the Secretary of Transportation pursuant to section 204(b) of this Act.]

(a) Each of the terms "foreign commerce" and "foreign trade" mean—

(1) trade between the United States and a foreign country; or

(2) trade between foreign ports.

* * * * * * *

[(c) The words "citizen of the United States" include a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (U.S.C. title 46, sec. 802), and with respect to a corporation under title VI of this Act, all directors of the corporation are citizens of the United States, and, in the case of a corporation, partnership, or association operating a vessel on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States the amount of interest required to be owned by a citizen of the United States shall be not less than 75 per centum.]

(c) The term "citizen of the United States" means a person eligible to own a documented vessel under chapter 121 of title 46, United States Code.

* * * * * * *

(h) The term "foreign subsidized shipyard" means a shipyard that—

(1) receives or benefits from, directly or indirectly, a shipyard subsidy for the construction of vessels; and

(2) is located in a foreign country that has not signed a trade agreement with the United States that provides for the elimination of subsidies for that shipyard.

(i) The term "subsidy" includes any of the following:

(1) Officially supported export credits and development assistance.

(2) Direct official operating support to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including—

(A) grants;

(B) loans and loan guarantees other than those available on the commercial market;

(C) forgiveness of debt;

(D) equity infusions on terms inconsistent with commercially reasonable investment practices;

(E) preferential provision of goods and services; and

(F) public sector ownership of commercial shipyards on terms inconsistent with commercially reasonable investment practices.

(3) Direct official support for investment in the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including the kinds of support listed in clauses (i) through (v) of subparagraph (B), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.

(4) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.

(5) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits, deductions, exemptions and preferences, including accelerated depreciation, if the benefits are not generally available to persons or firms not engaged in shipbuilding or repair.

(6) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anticompetitive arrangements.

(7) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance favoring shipowners with an indirect effect on shipbuilding or repair activities, and any assistance provided to suppliers of significant inputs to shipbuilding, which results in benefits to domestic shipbuilders.

(8) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade or any other export subsidy that may be prohibited as a result of the Uruguay Round of trade negotiations.

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TITLE XIV—SERIES CONSTRUCTION ASSISTANCE

SEC. 1401. PAYMENT OF ASSISTANCE AUTHORIZED.

(a) IN GENERAL.—The Secretary of Transportation (hereinafter in this title referred to as the "Secretary") may, subject to the availability of appropriations, pay assistance in accordance with this title to the owner of a shipyard that is located in the United States for the construction (including outfitting and equipping) of any commercial vessel that is one of a series of vessels for which payment of assistance under this section to the owner is approved by the Secretary under section 1402.

(b) AMOUNT OF ASSISTANCE.—The total amount of assistance paid under this section with respect to a vessel shall be equal to the series transition payment determined for the vessel under section 1403(a).

SEC. 1402. APPROVAL OF ASSISTANCE FOR CONSTRUCTION OF SERIES OF VESSELS.

(a) APPROVAL OF ASSISTANCE.—

(1) IN GENERAL.—The Secretary may approve payment of assistance under section 1401 for construction of a series of vessels in a shipyard if—

(A) the owner of the shipyard submits an application for that assistance in accordance with section 1405;

(B) the Secretary makes the determinations described in subsection (b); and

(C) the Secretary determines that payment of the assistance will contribute to maintaining national vessel construction capabilities that are essential in time of war or national emergency.

(2) LIMITATION.—The Secretary may not approve assistance under this section for a series of vessels if the series transition payment determined under section 1403(a) for any vessel in the series is greater than 50 percent of the estimate of the cost of constructing the vessel determined by the Secretary under section 1403(b)(2).

(b) DETERMINATIONS BY SECRETARY.—The Secretary may not approve assistance for construction of a series of vessels in a shipyard unless the Secretary has determined the following:

(1) VESSEL REQUIREMENTS.—The vessels are—

(A) commercial vessels of at least 10,000 gross tons; and

(B) commercially marketable on the international market.

(2) SHIPYARD REQUIREMENTS.—The shipyard in which the vessels will be constructed—

(A) is located in the United States; and

(B) upon completion of construction of the vessels, will be capable of constructing additional vessels of the same type as those in the series for a price that is competitive in the international market.

(3) APPLICANT REQUIREMENTS.—The applicant for the assistance—

(A) has the ability, financial resources, and other qualifications necessary for construction of the vessels;

(B) has entered into a contract for the construction of each of the first 2 vessels to be constructed in the series, which may include a contract for a vessel that will be constructed without assistance under this title; and

(C) is the owner of the shipyard in which the vessels will be constructed.

(4) CONTRACT REQUIREMENTS.—Each of the contracts required under paragraph (3)(B) are binding obligations on the applicant and all other parties to the contracts, except that such a contract may be contingent on—

(A) the approval of assistance under this title for construction of a vessel under the contract; and

(B) the making of a guarantee or commitment to guarantee obligations under title XI for construction under the contract.

(5) PURCHASER REQUIREMENTS.—Each person that is a purchaser of a vessel under a contract required under paragraph (3)(B)—

(A) has the ability, financial resources, and other qualifications necessary to own and operate the vessel in commercial service; and

(B) is a party to the contract.

(6) SERIES TRANSITION PAYMENT.—The series transition payment under section 1403 for each vessel in the series.

(c) PRIORITY FOR CERTAIN SERIES OF VESSELS.—In approving assistance under this title, the Secretary may give priority to a series of vessels—

(1) if a smaller number of vessel in the series are required to be constructed with assistance before construction of that type of vessel becomes cost effective;

(2) for which the total of the series transition payments determined under section 1403 for all vessels in the series is less than that total for other series of vessels for which applications are submitted for assistance under this title;

(3) that will be constructed in a shipyard with respect to which assistance under this title has not been provided; or

(4) that would contribute to the preservation of a shipyard that would be essential in a time of war or national emergency.

SEC. 1403. DETERMINATION OF SERIES TRANSITION PAYMENTS.

(a) IN GENERAL.—The Secretary shall determine the series transition payment for each vessel in a series of vessels for which an application for assistance under this title is received by the Secretary.

(b) AMOUNT OF SERIES TRANSITION PAYMENT.—The series transition payment for a vessel under subsection (a) is equal to the difference of—

(1) the estimated cost of completing construction of the vessel, as included in the application for assistance submitted under section 1405; minus

(2) a reasonable estimate of the cost of constructing the vessel under similar plans and specifications in a foreign shipyard that is considered by the Secretary to be a fair and representative example for purposes of determining the payment.

SEC. 1404. SERIES CONSTRUCTION AGREEMENT.

(a) IN GENERAL.—

(1) IN GENERAL.—The Secretary shall, for each series of vessels for which assistance is approved under section 1402, enter into a series construction agreement with the owner of the shipyard in which the series of vessels will be constructed, under which the Secretary is required to pay the owner assistance in accordance with a schedule established under paragraph (2).

(2) SCHEDULE FOR PAYMENTS.—An agreement under this subsection shall establish a schedule for the payment of assistance under the agreement, that is based on the construction schedule for vessels for which the assistance is paid.

(3) TERMINATION OF AGREEMENT.—An agreement under this subsection shall authorize the Secretary to terminate the agreement if—

(A) a contract required under section 1402(b)(3)(B) is terminated by the purchaser of the vessel under the contract, and the owner of the shipyard does not enter into a new contract for construction of the vessel within a period which shall be specified in the agreement; or

(B) the owner of the shipyard fails to enter into contracts for construction of all vessels in the series of vessels to which the agreement applies, within a period which shall be specified in the agreement.

(4) CONTINUING EFFECT OF AGREEMENT WITH RESPECT TO VESSELS COVERED BY CONTRACTS.—The termination of a series construction agreement under paragraph (3) shall not affect the effectiveness of the agreement with respect to vessels for which a construction contract is in effect on the date of termination.

(b) BINDING OBLIGATION OF THE UNITED STATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), a requirement that the Secretary make payments under a series construction agreement under subsection (a) shall constitute a binding obligation of the United States.

(2) TERMINATION OF OBLIGATION.—If the Secretary terminates a series construction agreement pursuant to subsection (a)(3), the obligation of the United States under paragraph (1) to make payments under the agreement shall terminate with respect to vessels for which no construction contract is in effect on the date of termination of the agreement.

(3) CONTINUING AVAILABILITY OF AMOUNTS.—Amounts to be used to liquidate an obligation under paragraph (1) that terminates under paragraph (2) shall remain available to the Secretary for the payment of assistance under this title.

SEC. 1405. APPLICATIONS FOR ASSISTANCE.

(a) SUBMITTAL.—A person desiring assistance under this title shall, in accordance with this section, submit an application to the Secretary.

(b) CONTENTS OF APPLICATION.—An application for assistance under this title with respect to a series of vessels shall include the following:

(1) A detailed description of the type of vessels included in the series, including plans and specifications for the vessels.

(2) Detailed estimates of the cost of completing construction of each of the vessels in the series, including such estimates from subcontractors for the construction as may be required by the Secretary.

(3) Copies of the contracts required under section 1402(b)(3)(B).

(4) Other information required by the Secretary to fulfill the requirements of this title.

(c) REGULATIONS.—The Secretary shall issue regulations setting forth the procedures for submitting an application for assistance under this title.

SEC. 1406. RESTRICTION ON VESSEL OPERATIONS.

A vessel for which assistance is paid under this title—

(1) may be operated only in foreign trade or domestic trade authorized under a registry endorsement for the vessel issued under section 12105 of title 46, United States Code; and

(2) may not be operated in the coastwise trade of the United States (including mixed coastwise and foreign trade), except coastwise trade authorized under a registry endorsement for the vessel issued under section 12105 of title 46, United States Code.

SEC. 1407. VESSEL DESIGN AWARDS.

The Secretary, subject to the availability of appropriations, may make an award to a United States shipyard on an equal matching basis for the cost of vessel designs and document and bid preparation for vessels described in section 403(b)(4).

TITLE 46, UNITED STATES CODE

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Subtitle II—Vessels and Seamen

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PART G—MERCHANT SEAMEN PROTECTION AND RELIEF

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CHAPTER 111—PROTECTION AND RELIEF

* * * * * * *

§ 11112. Master's lien for wages

The master of a documented vessel has the same lien against the vessel for the master's wages *(including any payment described in paragraph (5), (6), (7), (8), or (9) of section 302(c) of the Labor Management Relations Act, 1947 for an individual as master of the vessel, that is due from and unpaid by an owner or managing operator*

of the vessel) and the same priority as any other seaman serving on the vessel.

* * * * * * *

PART H—IDENTIFICATION OF VESSELS

CHAPTER 121—DOCUMENTATION OF VESSELS

* * * * * * *

§ 12106. Coastwise endorsements

(a) * * *

* * * * * * *

(e)(1) A certificate of documentation for a vessel may be endorsed with a coastwise endorsement if—

(A) the vessel is eligible for documentation under section 12102;

(B) the vessel is otherwise qualified under this section to be employed in the coastwise trade;

(C) the person that owns the vessel, or any other person that owns or controls the person that owns the vessel, is primarily engaged in leasing or other financing transactions;

(D) the vessel is under a demise charter to a person qualifying as a citizen of the United States for engaging in the coastwise trade under section 2 of the Shipping Act, 1916; and

(E) the demise charter is for—

(i) a period of at least 3 years; or

(ii) such shorter period as may be prescribed by the Secretary.

(2) On termination of a demise charter required under paragraph (1)(D), the coastwise endorsement may be continued for a period not to exceed 6 months on any terms and conditions that the Secretary of Transportation may prescribe.

(f) For purposes of the first proviso of section 27 of the Merchant Marine Act, 1920, section 2 of the Shipping Act, 1916, and section 12102(a), a vessel meeting the criteria of subsection (d) or (e) is deemed to be owned exclusively by citizens of the United States.

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Subtitle III—Maritime Liability

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CHAPTER 313—COMMERCIAL INSTRUMENTS AND MARITIME LIENS

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Subchapter I—General

§ 31301. Definitions

In this chapter—

(1) * * *

* * * * * * *

(5) "preferred maritime lien" means a maritime lien on a vessel—

(A) arising before a preferred mortgage was filed under section 31321 of this title;

(B) for damage arising out of maritime tort;

(C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(D) for wages of the crew of the vessel *(including any payment described in paragraph (5), (6), (7), (8), or (9) of section 302(c) of the Labor Management Relations Act, 1947 for any individual as a member of the crew of the vessel, that is due from and unpaid by an owner or managing operator of the vessel)*;

(E) for general average; or

(F) for salvage, including contract salvage; and

* * * * * * *

Subchapter II—Commercial Instruments

* * * * * * *

§ 31322. Preferred mortgages

[(a)(1) A preferred mortgage is a mortgage, whenever made, that—

[(A) includes the whole of a vessel;

[(B) is filed in substantial compliance with section 31321 of this title;

[(C)(i) covers a documented vessel; or

[(ii) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter; and

[(D) has as the mortgagee—

[(i) a State;

[(ii) the United States Government;

[(iii) a federally insured depository institution, unless disapproved by the Secretary;

[(iv) an individual who is a citizen of the United States;

[(v) a person qualifying as a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802); or

[(vi) a person approved by the Secretary of Transportation.

[(2) Paragraph (1)(D) of this subsection does not apply to—

[(A) a documented vessel that has a fisheries endorsement or a recreational endorsement or both endorsements; or

[(B) a vessel for which an application for documentation with a fisheries endorsement or a recreational endorsement or both endorsements, has been filed.]

(a) A preferred mortgage is a mortgage, whenever made, that—

(1) includes the whole of the vessel;

(2) is filed in substantial compliance with section 31321 of this title; and

(3)(A) covers a documented vessel; or

(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter.

*   *   *   *   *   *   *

§ 31323. Disclosing and incurring obligations before executing preferred mortgages

(a) * * *

(b) After executing a preferred mortgage and before the mortgagee has had a reasonable time to file the mortgage, the mortgagor may not incur, without the consent of the mortgagee, any contractual obligation establishing a lien on the vessel except a lien for—

(1) wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(2) wages for the crew of the vessel *(including any payment described in paragraph (5), (6), (7), (8), or (9) of section 302(c) of the Labor Management Relations Act, 1947 for any member of the crew of the vessel)*;

*   *   *   *   *   *   *

[§ 31328. Limitations on parties serving as trustees of mortgaged vessel interests

[(a) Without the approval of the Secretary of Transportation, an instrument or evidence of indebtedness secured by a mortgage of a documented vessel to a trustee may not be issued, assigned, or transferred to, or held in trust for, a person not qualifying as a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), unless the trustee—

[(1) is a State:

[(2) is the United States Government;

[(3) is a person approved by the Secretary and qualifying as a citizen of the United States under that section 2; or

[(4) has been approved by the Secretary.

[(b) The Secretary shall approve a trustee under subsection (a)(3) or (4) of this section if the trustee—

[(1) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

[(2) is authorized under those laws to exercise corporate trust powers;

[(3) is subject to supervision or examination by an official of the United States Government or a State;

[(4) has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

[(5) if the trustee is to be approved under subsection (a)(4) of this section, meets any other requirements prescribed by the Secretary.

[(c) If the trustee at any time does not satisfy the qualifications of subsection (b) of this section, the Secretary shall disapprove the trustee.

[(d) Except as provided in subsection (a) of this section, a right under a mortgage of a documented vessel may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under section 31322 of this title only with the approval of the Secretary.

[(e) The vessel may be operated by the trustee only with the approval of the Secretary.

[(f) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this section is void.

§ 31329. Court sales of documented vessels

[(a) A documented vessel may be sold by order of a district court only to—

[(1) a person eligible to own a documented vessel under section 12102 of this title; or

[(2) a mortgagee of that vessel.

[(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

[(1) the vessel must be held by the mortgagee for resale;

[(2) the vessel held by the mortgagee is subject to section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

[the sale of the vessel to the mortgagee is not a sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

[(c) Unless waived by the Secretary of Transportation, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

[(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the Secretary.

[(e) A sale of a vessel contrary to this section is void.]

§ 31329. Court sales of documented vessels

When a documented vessel is sold by order of a district court to a mortgagee not eligible to own a documented vessel—

(1) that sale is not a sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883); and

(2) unless the vessel is transferred to a foreign registry, the vessel may be operated only with the approval of the Secretary of Transportation.

§ 31330. Penalties

(a) * * *

(b)(1) A person that knowingly violates section [31328 or] 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

(2) A person violating section [31328 or] 31329 of this title is liable to the Government for a civil penalty of not more than $25,000.

(3) A vessel involved in a violation under section [31328 or] 31329 of this title and its equipment may be seized by, and forfeited to, the Government.

* * * * * * *

SECTION 9 OF THE SHIPPING ACT, 1916

* * * * * * *

SEC. 9. (b) * * *

* * * * * * *

(c) Except as provided in section 611 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1181), and sections 31322(a)(1)(D) and [31328] *12106(e)* of title 46, United States Code, a person may not, without the approval of the Secretary of Transportation—

(1) sell, [mortgage,] lease, charter, deliver, or in any manner transfer, or agree to sell, [mortgage,] lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel (except in a vessel that has been operated only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in section 2101 of title 46, United States Code) or in a vessel that has been operated only for pleasure) owned by a citizen of the United States or the last documentation of which was under the laws of the United States; or

* * * * * * *

(d)(1) Any charter, sale, [transfer, or mortgage] *or transfer* of a vessel, or interest in or control of that vessel, contrary to this section is void.

(2) A person that knowingly charters, sells, [transfers, or mortgages] *or transfers* a vessel, or interest in or control of that vessel, contrary to this section shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.

(3) A documented vessel may be seized by, and forfeited to, the United States Government if—

(A) the vessel is placed under foreign registry or operated under the authority of a foreign country contrary to this section; or

(B) a person knowingly charters, sells, [transfers, or mortgages] *or transfers* a vessel, or interest or control in that vessel, contrary to this section.

(4) A person that charters, sells, [transfers, or mortgages] *or transfers* a vessel, or an interest in or control of a vessel, in violation of this section is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.

(e) Notwithstanding subsection (c)(2), the Merchant Marine Act, 1936, or any contract entered into with the Secretary under that Act, a vessel may be placed under a foreign registry, without approval of the Secretary, if—

(1)(A) the Secretary determines that at least one replacement vessel of a capacity that is equivalent or greater, as measured by deadweight tons, gross tons, or container equivalent units, as appropriate, is documented under chapter 121 of title 46, Unit-

ed States Code, by the owner of the vessel placed under the foreign registry; and

(B) the replacement vessel is not more than 10 years of age on the date of that documentation;

(2)(A) the owner of the vessel has applied for an operating agreement under title IV of the Merchant Marine Act, 1936; and

(B) the Secretary, due to the unavailability of funds, has not awarded that owner an operating agreement within 60 days after the date of that application; or

(3)(A) before the expiration of an operating agreement entered into under title IV of the Merchant Marine Act, 1936, the owner has applied for a new operating agreement; and

(B) the Secretary, due to the unavailability of funds, has not awarded the owner an operating agreement before the later of—

(i) 60 days after the application for a new operating agreement; or

(ii) the date of expiration of the operating agreement.

(f) The Secretary shall give notice and an opportunity for a hearing for all approvals applied for under subsection (c)(2) for ocean-going merchant vessels that are of at least 3,000 gross tons.

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–252

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 2401

SEPTEMBER 22, 1993.—Referred to the House Calendar and ordered to be printed

Mr. FROST, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 254]

The Committee on Rules, having had under consideration House Resolution 254, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

The following are the amendments made in order under House Resolution 254.

PART 1

1. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE MEEHAN OF MASSACHUSETTS, OR REPRSENTATIVE FAZIO OF CALIFORNIA, OR REPRESENTATIVE MORELLA OF MARYLAND, OR REPRESENTATIVE SHAYS OF CONNECTICUT, OR REPRESENTATIVE GUNDERSON OF WISCONSIN, OR REPRESENTATIVE JOHNSTON OF FLORIDA, OR REPRESENTATIVE LEWIS OF GEORGIA, OR REPRESENTATIVE NADLER OF NEW YORK, OR THEIR DESIGNEE

Strike out section 575 (page 198, line 7, through page 206, line 11) and insert in lieu thereof the following:

SEC. 575. SENSE OF CONGRESS CONCERNING HOMOSEXUALITY IN THE ARMED FORCES.

It is the sense of Congress that the policy of the Government concerning the service of homosexuals in the Armed Forces is a matter that should be determined by the President, as chief executive officer of the Government and commander-in-chief of the Armed Forces, based upon advice provided to the President by the Secretary of Defense and the military advisers to the President and Secretary.

69–008

2. The Amendment To Be Offered by Representative Hunter of California, or His Designee

In section 575, at the end of subsection (c) of section 654 of title 10, United States Code, as proposed to be added by subsection (a) of that section (page 203, after line 15), insert the following new paragraph:

"(3) As part of the process for enlistment or appointment of a person as a member of the armed forces, the Secretary concerned shall, before the enlistment or appointment, ask the person (1) whether the person is a homosexual or bisexual, and (2) whether the person engages in homosexual acts or intends to engage in, or has a propensity to engage in, homosexual acts."

In section 575(d), strike out "sense of Congress that—" (page 205, beginning on line 18) and all that follows through "(2) the Secretary" (page 206, line 5) and insert in lieu thereof "sense of Congress that the Secretary".

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3. The Amendment To Be Offered by Representative Skelton of Missouri, or His Designee

Strike out section 575 (page 198, line 7, through page 206, line 11) and insert in lieu thereof the following:

SEC. 575. POLICY CONCERNING HOMOSEXUALITY IN THE ARMED FORCES.

(a) Codification.—(1) Chapter 37 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 654. Policy concerning homosexuality in the armed forces

"(a) Findings.—Congress makes the following findings:

"(1) Section 8 of article I of the Constitution of the United States commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for the government and regulation of the land and naval forces.

"(2) There is no constitutional right to serve in the armed forces.

"(3) Pursuant to the powers conferred by section 8 of article I of the Constitution of the United States, it lies within the discretion of the Congress to establish qualifications for and conditions of service in the armed forces.

"(4) The primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise.

"(5) The conduct of military operations requires members of the armed forces to make extraordinary sacrifices, including the ultimate sacrifice, in order to provide for the common defense.

"(6) Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.

"(7) One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a mili-

tary unit greater than the sum of the combat effectiveness of the individual unit members.

"(8) Military life is fundamentally different from civilian life in that—

"(A) the extraordinary responsibilities of the armed forces, the unique conditions of military service, and the critical role of unit cohesion, require that the military community, while subject to civilian control, exist as a specialized society; and

"(B) the military society is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society.

"(9) The standards of conduct for members of the armed forces regulate a member's life for 24 hours each day beginning at the moment the member enters military status and not ending until that person is discharged or otherwise separated from the armed forces.

"(10) Those standards of conduct, including the Uniform Code of Military Justice, apply to a member of the armed forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty.

"(11) The pervasive application of the standards of conduct is necessary because members of the armed forces must be ready at all times for worldwide deployment to a combat environment.

"(12) The worldwide deployment of United States military forces, the international responsibilities of the United States, and the potential for involvement of the armed forces in actual combat routinely make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.

"(13) The prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service.

"(14) The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

"(15) The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

"(b) POLICY.—A member of the armed forces shall be separated from the armed forces under regulations prescribed by the Secretary of Defense if one or more of the following findings is made and approved in accordance with procedures set forth in such regulations:

"(1) That the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts

unless there are further findings, made and approved in accordance with procedures set forth in such regulations, that the member has demonstrated that—

"(A) such conduct is a departure from the member's usual and customary behavior;

"(B) such conduct, under all the circumstances, is unlikely to recur;

"(C) such conduct was not accomplished by use of force, coercion, or intimidation;

"(D) under the particular circumstances of the case, the member's continued presence in the armed forces is consistent with the interests of the armed forces in proper discipline, good order, and morale; and

"(E) the member does not have a propensity or intent to engage in homosexual acts.

"(2) That the member has stated that he or she is a homosexual or bisexual, or words to that effect, unless there is a further finding, made and approved in accordance with procedures set forth in the regulations, that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

"(3) That the member has married or attempted to marry a person known to be of the same biological sex.

"(c) ENTRY STANDARDS AND DOCUMENTS.—(1) The Secretary of Defense shall ensure that the standards for enlistment and appointment of members of the armed forces reflect the policies set forth in subsection (b).

"(2) The documents used to effectuate the enlistment or appointment of a person as a member of the armed forces shall set forth the provisions of subsection (b).

"(d) REQUIRED BRIEFINGS.—The briefings that members of the armed forces receive upon entry into the armed forces and periodically thereafter under section 937 of this title (article 137 of the Uniform Code of Military Justice) shall include a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces, including the policies prescribed under subsection (b).

"(e) RULE OF CONSTRUCTION.—Nothing in subsection (b) shall be construed to require that a member of the armed forces be processed for separation from the armed forces when a determination is made in accordance with regulations prescribed by the Secretary of Defense that—

"(1) the member engaged in conduct or made statements for the purpose of avoiding or terminating military service; and

"(2) separation of the member would not be in the best interest of the armed forces.

"(f) DEFINITIONS.—In this section:

"(1) The term 'homosexual' means a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, and includes the terms 'gay' and 'lesbian'.

"(2) The term 'bisexual' means a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

"(3) The term 'homosexual act' means—

"(A) any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires; and

"(B) any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subparagraph (A).".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following:

"654. Policy concerning homosexuality in the armed forces.".

(b) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense shall revise Department of Defense regulations, and issue such new regulations as may be necessary, to implement section 654 of title 10, United States Code, as added by subsection (a).

(c) SAVINGS PROVISION.—Nothing in this section or section 654 of title 10, United States Code, as added by subsection (a) may be construed to invalidate any inquiry, investigation, administrative action or proceeding, court-martial, or judicial proceeding conducted before the effective date of regulations issued by the Secretary of Defense to implement such section 654.

(d) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the suspension of questioning concerning homosexuality as part of the processing of individuals for accession into the Armed Forces under the interim policy of January 29, 1993, should be continued, but the Secretary of Defense may reinstate that questioning with such questions or such revised questions as he considers appropriate if the Secretary determines that it is necessary to do so in order to effectuate the policy set forth in section 654 of title 10, United States Code, as added by subsection (a); and

(2) the Secretary of Defense should consider issuing guidance governing the circumstances under which members of the Armed Forces questioned about homosexuality for administrative purposes should be afforded warnings similar to the warnings under section 831(b) of title 10, United States Code (article 31(b) of the Uniform Code of Military Justice).

PART 2

The following is the amendment made in order regarding U.S. policy in Somalia.

THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE GEPHARDT OF MISSOURI, OR REPRESENTATIVE GILMAN OF NEW YORK, OR THEIR DESIGNEE, DEBATABLE FOR NOT TO EXCEED 1 HOUR

At the end of title X (page 346, after line 23), insert the following new section:

SEC. 1043. INVOLVEMENT OF ARMED FORCES IN SOMALIA.

(a) SENSE OF CONGRESS REGARDING UNITED STATES POLICY TOWARDS SOMALIA.—

(1) Since United States Armed Forces made significant contributions under Operation Restore Hope towards the establishment of a secure environment for humanitarian relief operations and restoration of peace in the region to end the humanitarian disaster that had claimed more than 300,000 lives.

(2) Since the mission of United States forces in support of the United Nations appears to be evolving from the establishment of "a secure environment for humanitarian relief operations," as set out in United Nations Security Council Resolution 794 of December 3, 1992, to one of internal security and nation building.

(b) STATEMENT OF CONGRESSIONAL POLICY.—

(1) CONSULTATION WITH THE CONGRESS.—The President should consult closely with the Congress regarding United States policy with respect to Somalia, including in particular the deployment of United States Armed Forces in that country, whether under United Nations or United States command.

(2) PLANNING.—The United States shall facilitate the assumption of the functions of United States forces by the United Nations.

(3) REPORTING REQUIREMENT.—

(A) The President shall ensure that the goals and objectives supporting deployment of United States forces to Somalia and a description of the mission, command arrangements, size, functions, location, and anticipated duration in Somalia of those forces are clearly articulated and provided in a detailed report to the Congress by October 15, 1993.

(B) Such report shall include the status of planning to transfer the function contained in paragraph (2).

(4) CONGRESSIONAL APPROVAL.—Upon reporting under the requirements of paragraph (3) Congress believes the President should by November 15, 1993, seek and receive congressional authorization in order for the deployment of United States forces to Somalia to continue.

PART 3

The following are the amendments made in order regarding base closures.

1. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE SNOWE OF MAINE, OR HER DESIGNEE

At the end of subtitle B of title XXVIII (page 516, after line 6), insert the following new section:

SEC. 2819. CONVEYANCE OF CLOSED BASES TO NEIGHBORING COMMUNITIES.

(a) FINDINGS AND PURPOSES.—(1) The Congress finds the following:

(A) The Department of Defense has been directed to reduce the size and cost of the military and this can only be accomplished by closing military installations.

(B) A military installation is a part of the infrastructure of the community in which it is located and there is a long standing symbiotic relationship between a military installation and the community.

(C) The people in an impacted community have made substantial, long term investments of time, training, and wealth to support the military installation.

(D) The loss to an impacted community when a military installation is closed may be substantial and in such cases the Congress wishes to mitigate the damage to the impacted community.

(E) An impacted community knows best the needs of the community and the best way to use available resources to meet these needs consistent with existing national priorities.

(F) Unfettered ownership of the real property associated with a closed military installation at the earliest possible time can partially offset the loss to a community which results when a military installation is closed.

(2) The purposes of this section are as follows:

(A) To benefit communities impacted significantly when a military installation located in such communities is closed by authorizing the real and excess related personal property on which the military installations are located to be conveyed to the impacted community as soon as possible after a decision to close the military installation is made but no later than 180 days after closure.

(B) To provide significantly impacted communities a resource which will aid in mitigating the loss incurred by the community following a decision to close a military installation and which may be used by the impacted community, as the community deems appropriate, for industrial, commercial, residential, recreational, or public uses.

(b) IN GENERAL.—In accordance with this section, the Secretary of Defense shall convey to an eligible political subdivision or subdivisions of a State or to the State all right, title, and interest of the United States in the military installation closed pursuant to a base closure law.

(c) ADVANCE NOTICE TO ELIGIBLE STATES AND POLITICAL SUBDIVISIONS.—As soon as practicable after a military installation has been identified for closure, but in any event not later than the date on which the installation is closed, the Secretary shall transmit to the appropriate State, and political subdivisions, communities, and counties of the State to which property at such installation may be conveyed pursuant to this section, advance notification of the Secretary's intention to make a conveyance of the property of the installation.

(d) ELIGIBLE STATES AND POLITICAL SUBDIVISIONS.—Property at a military installation that is to be conveyed under subsection (b) shall be conveyed to a political subdivision or subdivisions or State in the following order of priority:

(1) The Secretary shall convey the property to a political subdivision of a State that is designated in State law to receive the conveyance of such property and accepts the conveyance.

(2) If there is no political subdivision designated to receive the property pursuant to paragraph (1), the Secretary shall convey the property to the State in which the property is located if the law of that State designates the State to receive the conveyance of such property and the State accepts the conveyance.

(3) In the case of any real property for which neither a State nor a political subdivision of a State is designated pursuant to paragraph (1) or (2), the Secretary shall consult with appropriate State and local officials to determine the distribution of the property that would best serve the interests of the residents of the State and affected political subdivisions of the State. The Secretary shall convey the property in accordance with the determination made under this paragraph if the selected political subdivision or subdivisions agree to accept the property.

(4) In the case of any real property that is not accepted under the preceding paragraphs, the Secretary shall offer the property to other departments and agencies of the Federal Government.

(e) PROPERTY TO BE CONVEYED.—In addition to the conveyance of real property to a State or political subdivision pursuant to this section, the Secretary shall convey any related personal property that the Secretary determines is appropriate for use by the recipient in connection with the recipient's use of the real property. Pending such conveyance, the Secretary shall maintain the real property and personal property to prevent the deterioration of the property.

(f) CONSIDERATION NOT TO BE REQUIRED.—No consideration may be required for a conveyance of property pursuant to this section.

(g) WAIVER AUTHORITY.—(1) Subject to paragraph (3), the President may waive in whole or in part the requirement to convey property at a military installation under subsection (b) if the President—

(A) determines that the continuation of the United States interest in such property—

(i) is vital to national security interests; or

(ii) the value of the installation is so high that a conveyance to the political subdivision or State would constitute an undue windfall to the community and would not be necessary for the economic recovery of the region; and

(B) transmits to Congress a certification of such determinations together with the reasons for such determinations.

(2) The total number of waivers made under paragraph (1) may not exceed five military installations for each package of closures approved by Defense Base Closure And Realignment Commission under a base closure Law, except that a waiver in part shall not count against this total if the value of the property reserved does not exceed 25 percent of the total value of such installation or if the appropriate political subdivision or State agrees with the reservation.

(3) A determination and certification in the case of the closure of any military installation shall be effective only if made before the earlier of—

(A) the date on which the installation is closed; or

(B) December 31 of the year following the year in which the closure of that installation is approved by the President.

(4) The President may extend the deadline for making a determination and certification under paragraph (3) for not more than two successive periods of 90 days by transmitting to Congress a notification of the extension before the end of the deadline or extended deadline, as the case may be.

(5) The President may withdraw a waiver under paragraph (1) in the case of any military installation. Not later than 180 days after the withdrawal of the waiver, the Secretary of Defense shall make the conveyance required by subsection (b) in accordance with this section.

(h) CONTINUING RESPONSIBILITY OF THE DEPARTMENT OF DEFENSE.—Prior to and after any conveyance of real property of a closed military installation pursuant to this section, the Secretary of Defense, in consultation with the appropriate political subdivision or State, shall be responsible for providing economic adjustment and community planning assistance (including assistance in conducting public hearings to decide the appropriate use of a closed military installation) to communities near the closed military installation until such time as the economic stability of such communities is achieved, as determined by the Secretary.

(i) SOURCES OF FUNDING.—The Secretary may expend any funds in a base closure account to carry out the responsibilities referred to in subsection (h). The Secretary shall notify Congress in advance of the obligation of funds for such purpose.

(j) IMPROVEMENT OF PROPERTY PENDING CONVEYANCE.—(1) Notwithstanding any other provision of law, the Secretary of Defense and the head of any other department or agency of the Federal Government may continue, on and after the applicable date referred to in paragraph (2), to obligate funds (to the extent available) for making improvements to the property that has not been conveyed that will facilitate the conveyance of the property and are consistent with the use to be made of the property by the recipient of the conveyance.

(2) Paragraph (1) applies in the case of property at a military installation on and after the date on which the closure of that installation is approved by the President.

(k) RELATIONSHIP TO CERCLA.—Nothing in this section shall be construed as superseding section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(l) DEFINITIONS.—For purposes of the section:

(1) The term "military installation" has the meaning given such term in section 2687(e)(1) of title 10, United States Code.

(2) The term "base closure law" means the following:

(A) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(C) Section 2687 of title 10, United States Code.

(3) The term "base closure account" means the following:

(A) The Department of Defense Base Closure Account, as established by section 207(a) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(B) The Department of Defense Base Closure Account 1990, as established by section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

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2. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONYERS OF MICHIGAN, OR HIS DESIGNEE, TO THE AMENDMENT NUMBERED 1 BY REPRESENTATIVE SNOWE OF MAINE, OR HER DESIGNEE

At the end of title X (page 346, after line 23), add the following:

SEC. 1043. AUTHORITY TO TRANSFER SURPLUS REAL PROPERTY FOR ECONOMIC DEVELOPMENT.

Section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) is amended by adding at the end the following:

"(5)(A) Under regulations prescribed by the Administrator under subparagraph (K), the Administrator may transfer by sale or lease to any State or political subdivision thereof, or to any agency or instrumentality of a State or subdivision, such surplus real property located at a military installation that is closed or realigned pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act, the Defense Base Closure and Realignment Act of 1990, or section 2687 of title 10, United States Code, including buildings, fixtures, and equipment situated thereon, as the Administrator has determined, in accordance with this paragraph, to be suitable and needed for the support of an economic development program.

"(B) The Administrator may not transfer property under this paragraph unless the Administrator—

"(i) has determined, after consultation with the Secretary of Labor, that the surplus real property to be transferred is located in an area where closure or realignment of a military installation results in or substantially contributes to major economic dislocation that meets the criteria established in regulations under subparagraph (F); and

"(ii) has received an economic development plan prepared in accordance with regulations prescribed under subparagraph (G) and submitted by a non-Federal entity described in subparagraph (A), has obtained approval of the plan by the Secretary of Commerce, and has obtained assurances from such entity and other sources as needed that the property to be transferred will be used in furtherance of the plan.

The determination by the Administrator under clause (i) shall be accompanied by an explanation and justification, in writing, of the reason for the determination.

"(C) The consideration to be paid to the United States for any transfer of property under this paragraph shall be an amount equal to 50 percent of the estimated fair market value of such property or leasehold interest, as determined by the Administrator.

"(D) The instrument of transfer of property transferred under this paragraph—

"(i) shall contain a condition that all such property shall be used and maintained for the purpose for which it was transferred in perpetuity in accordance with the economic development plan approved by the Secretary of Commerce under subparagraph (B)(i), in perpetuity or, in the case of a lease, for the term of the lease; and

"(ii) may contain such additional terms, conditions, reservations, and restrictions as the Administrator determines to be necessary to safeguard the interests of the United States.

"(E) The Administrator may—

"(i) with the advice and assistance of the Secretary of Commerce, determine compliance with the terms, conditions, reservations, and restrictions contained in any instrument by which such transfer of property was made;

"(ii) reform correct, or amend any such instrument by the execution of a corrective, reformative, or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

"(iii)(I) grant releases from any of the terms, conditions, reservations, and restrictions contained in, and (II) convey, quitclaim, or release to the transferee any right or interest reserved to the United States by, any instrument by which such transfer was made, if the Administrator determines that the property transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim will not prevent accomplishment of the purpose for which such property was so transferred.

Any such releases, conveyance, or quitclaim may be granted on, or made subject to, such terms and conditions as the Administrator considers necessary to protect or advance the interests of the United States.

"(F) The Administrator, after consultation with the Secretaries of Commerce, Labor, and Defense, shall issue regulations that establish objective criteria for use in determining areas of major economic dislocation for purposes of subparagraph (B)(i). In setting out the criteria, the Administrator shall describe pertinent indices and statistics from the Departments of Commerce and Labor, relating to the appropriate geographic area and covering such factors as unemployment rates and trends, median and per capita incomes, poverty and near-poverty levels, and estimates of population change, as well as statistics and data from other Federal sources, including closure-or realignment-related job loss and its ratio to remaining employment in the affected area.

"(G) The Administrator, with the advice and assistance of the Secretary of Commerce, shall issue regulations setting forth elements, requirements, form, and procedures for the preparation and submission of economic development plans for whose furtherance land may be transferred under this section.

"(H) Regulations required to be prescribed under this paragraph shall be issued within 90 days after the effective date of this paragraph.

"(I) The Administrator may not make the delegation required under section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act and section 2905(b) of the Defense Base Closure and Realignment Act of 1990 with respect to disposal of property under this paragraph until all regulations required to be prescribed under this paragraph have been issued.

"(J) No transfer of property may be made under the authority of this paragraph after the expiration of 7 years after the effective date of this paragraph.

"(K) The Administrator, after consultation with the Secretary of Defense, shall prescribe regulations to implement this paragraph.

"(L) This section shall not be construed as affecting, amending, of modifying in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.".

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3. The Amendment To Be Offered by Representative Fazio of California, or His Designee

At the end of subtitle B of title XXVIII (page 516, after line 6), insert the following new section:

SEC. 2819. BASE DISPOSAL MANAGEMENT COOPERATIVE AGREEMENT.

(a) Use of Independent Site Manager.—(1) In order to fulfill the responsibilities of the Secretary of Defense under a base closure law, the Secretary may enter into not less than one and not more than 10 cooperative agreements described in section 6305 of title 31, United States Code, with independent entities (in this section referred to as a "Site Manager") to assist the Secretary in managing the site planning, approval, preparation, and disposal of excess and surplus real property under the authority delegated to the Secretary for military installations to be closed or realigned under a base closure law. The selection of a Site Manager under this subsection for a military installation shall be made by the Secretary, after suitable public notice, through the good faith exercise of the Secretary's discretion and in consultation with the affected local community in which the military installation is located.

(2) During the term of a cooperative agreement entered under this subsection and the five-year period beginning on the termination date of the cooperative agreement, the Site Manager subject to that cooperative agreement (and its affiliates) shall be barred from bidding for or acquiring any interest in real property or facilities located at any of the military installations to be managed by the Site Manager, unless such acquisition is necessary to execute the terms of the cooperative agreement.

(b) Qualifications.—In selecting a Site Manager under subsection (a), the Secretary of Defense shall ensure that the Site Manager, either directly or through its principals, has had prior experience—

(1) in the site planning of properties located at Federal facilities;

(2) in dealing with local land use authorities in the States in which the military installations to be managed are located;

(3) in managing the cleanup of hazardous waste contamination;

(4) in resolving land use issues under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.); and

(5) in meeting such other qualifications as the Secretary considers to be necessary to perform the tasks set forth in this section.

(c) DUTIES GENERALLY.—Under the cooperative agreement entered into under subsection (a), a Site Manager shall—

(1) analyze the land use potential of the military installations to be managed by the Site Manager;

(2) coordinate with the applicable State and local authorities to develop reuse options and obtain necessary zoning and infrastructure approvals with respect to these installations;

(3) manage the remediation of any adverse environmental conditions on these installations in accordance with remediation plans prepared and approved pursuant to applicable laws;

(4) coordinate with State and Federal agencies to complete all reports and analyses required under applicable law with respect to these installations;

(5) initiate and coordinate the notices and consultations with Federal, State, regional, and local agencies contemplated under the authority delegated to the Secretary of Defense under a base closure law and the procedures contemplated under section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411);

(6) manage through the use of community assets the maintenance and interim use of these installations pending final disposition;

(7) prepare real property and facilities at these installations for disposal; and

(8) manage the competitive public sale of sale parcels in accordance with subsection (f).

(d) BUDGET AND SUBCONTRACTS.—(1) A Site Manager and the Secretary of Defense shall jointly develop a detailed budget for each phase of the site preparation and approval process for each military installation to be managed by the Site Manager.

(2) The cooperative agreement entered into under subsection (a) shall authorize the Site Manager, through the sole exercise of its reasonable business judgment and in accordance with the approved budget, to engage contractors and other professionals to complete all aspects of the site preparation and approval process, including environmental remediation. A Site Manager shall enter into such contracts in accordance with such contracting guidelines as the Secretary may reasonably require in the cooperative agreement to promote fair competition, fair labor practices, and good faith commercially reasonable efforts to afford contracting opportunities to small business concerns owned by socially- or economically-disadvantaged persons.

(3) The Secretary shall reimburse the Site Manager for the reasonable overhead costs incurred by the Site Manager and shall make funds available for the timely payment of amounts due under the contracts and subcontracts entered into in accordance with the cooperative agreement and the approved budget.

(e) CONTINUED LIABILITY FOR ENVIRONMENTAL REMEDIATION.—Nothing in this section shall be considered to diminish the liability of the Federal Government with respect to environmental conditions existing on a military installation managed by a Site Manager pursuant to a cooperative agreement entered into under subsection (a).

(f) SALE PROCEDURES.—After a sale parcel managed by a Site Manager has received all necessary approvals and is otherwise ready for competitive public sale, the Site Manager shall sell the parcel, as an agent for the Secretary of Defense, in one or more transactions. Each sale shall be on terms acceptable to the Secretary, determined in consultation with the Site Manager and appropriate local authorities.

(g) DISPOSITION OF PROCEEDS.—The proceeds from each sale under subsection (f) shall be divided among the Department of Defense, the Site Manager involved, and appropriate local authorities as follows:

(1) The Secretary of Defense shall receive an amount equal to—

(A) the costs incurred by the Secretary under the cooperative agreement with the Site Manager and under applicable contracts and subcontracts entered into by the Site Manager pursuant to the cooperative agreement (other than environmental analysis and remediation costs, costs of preparing or conducting reports, analyses, notices, and consultations required under applicable law, property maintenance costs, and all other costs that the Secretary would be required to incur if the cooperative agreement with the Site Manager did not exist) and the reasonable costs of conducting the sale; and

(B) ⅓ of the remainder of the proceeds.

(2) From amounts remaining after operation of paragraph (1), the applicable local authorities, as determined by the Secretary, shall receive ½ of the remainder. If the appropriate local authorities cannot be determined satisfactorily to the Secretary, the State in which the military installation involved is located shall receive the amount that would be distributed pursuant to this paragraph.

(3) From amounts remaining after operation of paragraph (1), the Site Manager involved shall receive ½ of the remainder.

(h) REPORTS.—(1) At such intervals as the Secretary of Defense may prescribe, each Site Manager shall submit to the Secretary reports describing the activities of the Site Manager under a cooperative agreement entered into under subsection (a) and such other information as the Secretary may require.

(2) Not later than May 31, 1994, and May 31, 1995, the Secretary of Defense shall submit to Congress a report regarding all military installations covered by a cooperative agreement under this section

and the status of the site preparation and disposal process at the installations.

(i) BASE CLOSURE LAW DEFINED.—For purposes of this section, the term "base closure law" means each of the following:

(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(3) Section 2687 of title 10, United States Code.

(4) Any other similar law enacted after the date of the enactment of this Act.

PART 4

1. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE KOPETSKI OF OREGON, OR HIS DESIGNEE

At the end of subtitle C of title XXXI, insert the following new section:

SEC. 3139. MORATORIUM ON NUCLEAR WEAPON TESTING.

(a) MORATORIUM.—Except as provided in subsection (b), no underground test of a nuclear weapon may be conducted by the United States before September 30, 1994.

(b) EXCEPTION.—An underground test of a nuclear weapon may be conducted by the United States before September 30, 1994 if a foreign state conducts a test of a nuclear weapon before such date. An underground test of a nuclear weapon may be conducted by the United States under this subsection only in accordance with the procedures established in section 507(c) of Public Law 102–377.

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2. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE MEEHAN OF MASSACHUSETTS, OR HIS DESIGNEE

Strike out section 714 (page 231, lines 19 through 24) and insert in lieu thereof the following:

SEC. 714. DELAY OF TERMINATION EFFECTIVE DATE FOR UNIFORMED SERVICES TREATMENT FACILITIES.

Subsection (e) of section 1252 of the Department of Defense Authorization Act, 1984 (42 U.S.C. 248d), is amended by striking out "1993" in the first sentence and inserting in lieu thereof "1997".

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3. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE KYL OF ARIZONA, OR HIS DESIGNEE

Strike out section 714 (page 231, lines 19 through 24) and insert in lieu thereof the following:

SEC. 714. DELAY OF TERMINATION EFFECTIVE DATE FOR UNIFORMED SERVICES TREATMENT FACILITIES AND LIMITATION ON EXPENDITURES.

(a) DELAY OF TERMINATION EFFECTIVE DATE.—Subsection (e) of section 1252 of the Department of Defense Authorization Act, 1984

(42 U.S.C. 248d), is amended by striking out "1993" and inserting in lieu thereof "1994".

(b) LIMITATION ON EXPENDITURES.—Subsection (f) of such section is amended to read as follows:

"(f) LIMITATION ON EXPENDITURES.—The total amount of expenditures by the Secretary of Defense to carry out this section and section 911 of the Military Construction Authorization Act, 1982 (42 U.S.C. 248c), may not exceed $196,600,000 for fiscal year 1994.".

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4. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE LEVY OF NEW YORK, OR REPRESENTATIVE PALLONE OF NEW JERSEY, OR THEIR DESIGNEE

At the end of title IX (page 325, after line 25), insert the following section:

SEC. 950. REINVESTIGATION BY DEFENSE INSPECTOR GENERAL OF CERTAIN CASES OF DEATH OF MEMBERS OF THE ARMED FORCES BY SELF-INFLICTED WOUNDS.

(a) IN GENERAL.—The Inspector General of the Department of Defense shall conduct a reinvestigation of the death of any member of the Armed Forces who died while on active duty after January 1, 1982, from a wound determined to be self-inflicted (whether by accident or intention) in any case in which the immediate family members of the deceased servicemember request the reinvestigation based upon allegations grounded in new evidence or well-founded suspicions of an incomplete or inadequate previous investigation.

(b) EXPERT SERVICES.—In carrying out any such reinvestigation, the Inspector General may obtain necessary expert services (such as the services of pathologists and ballistics experts) from sources outside the Department of Defense.

(c) FINDINGS AND RECOMMENDATIONS.—The Inspector General shall prepare a report on each case investigated under this section. Based upon the findings and conclusions in such report, the Secretary of the military department concerned shall take such actions as the Secretary determines to be appropriate, including actions to correct the record of the deceased servicemember and actions to institute disciplinary proceedings against other servicemembers relating to the circumstances of the death investigated or to the conduct of earlier investigations of that death.

(d) FURNISHING OF REPORT TO FAMILY.—In each case of an investigation under this section, the Inspector General shall furnish a copy of the report on the investigation to the family members of the individual whose death was investigated in accordance with section 1072 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2508).

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5. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE SMITH OF NEW JERSEY, OR HIS DESIGNEE

At the end of title II (page 81, after line 23), add the following new section:

SEC. 266. LYME DISEASE PROGRAM.

(a) PROGRAM.—The Secretary of Defense shall carry out a program relating to Lyme disease. The program shall be carried out through the Environmental Hygiene Agency of the Department of the Army. The Secretary shall provide that information relating to prevention, detection, or treatment of Lyme disease that is developed under the program and that may be applicable to the general public shall be provided to the Secretary of Health and Human Services for dissemination to appropriate public health authorities through the Public Health Service.

(b) FUNDING.—From funds made available to the Army for fiscal year 1994 for research, development, test, and evaluation pursuant to section 201, the sum of $1,000,000 shall be available for the program under subsection (a), of which $500,000 shall be for one-time startup costs for equipment, facilities, and software development and $500,000 shall be for fiscal year 1994 labor and operating expenses.

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6. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE TORRICELLI OF NEW JERSEY, OR HIS DESIGNEE

At the end of title VIII (page 293, before line 17), add the following new section:

SEC. 825. REPORTS BY DEFENSE CONTRACTORS OF DEALINGS WITH TERRORIST COUNTRIES.

(a) REPORT REQUIREMENT.—Whenever the Secretary of Defense proposes to enter into a contract with any person for an amount in excess of $500,000 for the provision of goods or services to the Department of Defense, the Secretary shall require that person—

(1) before entering into the contract, to report to the Secretary each commercial transaction which that person has conducted with any terrorist country during the preceding three years; and

(2) to report to the Secretary each commercial transaction which that person conducts during the course of the contract (but not after the date specified in subsection (f)) with any terrorist country.

The requirement contained in paragraph (2) shall be included in the contract with the Department of Defense.

(b) REGULATIONS.—The Secretary of Defense shall issue such regulations as may be necessary to carry out this section.

(c) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense shall submit to the Congress each year a report setting forth those persons conducting commercial transactions with terrorist countries as included in the reports made pursuant to subsection (a) during the preceding fiscal year, the terrorist countries with which those transactions were conducted, and the nature of those transactions.

(d) TERRORIST COUNTRY DEFINED.—A country shall be considered to be a terrorist country for purposes of a contract covered by this section if the Secretary of State has determined pursuant to law, as of the date that is 60 days before the date on which the contract is signed, that the government of that country is a government that has repeatedly provided support for acts of international terrorism.

(e) EFFECTIVE DATE.—This section shall apply with respect to contracts entered into after the end of the 60-day period beginning on the date of the enactment of this Act.

(f) TERMINATION.—This section expires on September 30, 1996.

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7. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE MCCLOSKEY OF INDIANA, OR HIS DESIGNEE

At the end of subtitle C of title X (page 346, after line 23), insert the following new sections:

SEC. 1043. NUCLEAR NONPROLIFERATION.

(a) FINDINGS.—The Congress finds the following:

(1) The United States has been seeking to contain the spread of nuclear weapons technology and materials.

(2) With the end of the Cold War and the breakup of the Soviet Union, the proliferation of nuclear weapons is now a leading military threat to the national security of the United States and its allies.

(3) The United Nations Security Council declared on January 31, 1992, that "proliferation of all weapons of mass destruction constitutes a threat to international peace and security" and committed to taking appropriate action to prevent proliferation from occurring.

(4) Aside from the five declared nuclear weapon states, a number of other nations have or are pursuing nuclear weapons capabilities.

(5) The IAEA is a valuable international institution to counter proliferation, but the effectiveness of its system to safeguard nuclear materials may be adversely affected by financial constraints.

(6) The Nuclear Non-Proliferation Treaty codifies world consensus against further nuclear proliferation and is scheduled for review and extension in 1995.

(7) The Nuclear Nonproliferation Act of 1978 declared that the United States is committed to continued strong support for the Nuclear Non-Proliferation Treaty and to a strengthened and more effective IAEA, and established that it is United States policy to establish more effective controls over the transfer of nuclear equipment, materials, and technology.

(b) COMPREHENSIVE NUCLEAR NONPROLIFERATION POLICY.—In order to end nuclear proliferation and reduce current nuclear arsenals and supplies of weapons-usable nuclear materials, it should be the policy of the United States to pursue a comprehensive policy to end the further spread of nuclear weapons capability, roll back nuclear proliferation where it has occurred, and prevent the use of nuclear weapons anywhere in the world, with the following additional objectives:

(1) Successful conclusion of all pending nuclear arms control and disarmament agreements with all the republics of the former Soviet Union and their secure implementation.

(2) Full participation by all the republics of the former Soviet Union in all multilateral nuclear nonproliferation efforts and acceptance of IAEA safeguards on all their nuclear facilities.

(3) Strengthening of United States and international support to the IAEA so that the IAEA has the technical, financial, and political resources to verify that countries are complying with their nonproliferation commitments.

(4) Strengthening of nuclear export controls in the United States and other nuclear supplier nations, impose sanctions on individuals, companies, and countries which contribute to nuclear proliferation, and provide increased public information on nuclear export licenses approved in the United States.

(5) Reduction in incentives for countries to pursue the acquisition of nuclear weapons by seeking to reduce regional tensions and to strengthen regional security agreements, and encourage the United Nations Security Council to increase its role in enforcing international nuclear nonproliferation agreements.

(6) Support for the indefinite extension of the Nuclear Non-Proliferation Treaty at the 1995 conference to review and extend that treaty and seek to ensure that all countries sign the treaty or participate in a comparable international regime for monitoring and safeguarding nuclear facilities and materials.

(7) Reaching agreement with the Russian Federation to end the production of new types of nuclear warheads.

(8) Pursuing, once the START I treaty and the START II treaty are ratified by all parties, a multilateral agreement to significantly reduce the strategic nuclear arsenals of the United States and the Russian Federation to below the levels of the START II treaty, with lower levels for the United Kingdom, France, and the People's Republic of China.

(9) Reaching immediate agreement with the Russian Federation to halt permanently the production of fissile material for weapons purposes, and working to achieve worldwide agreements to—

(A) end in the shortest possible time the production of weapons-usable fissile material;

(B) place existing stockpiles of such materials under bilateral or international controls; and

(C) require countries to place all of their nuclear facilities dedicated to peaceful purposes under IAEA safeguards.

(10) Strengthening IAEA safeguards to more effectively verify that countries are complying with their nonproliferation commitments and provide the IAEA with the political, technical, and financial support necessary to implement the necessary safeguard reforms.

(11) Conclusion of a multilateral comprehensive nuclear test ban treaty.

(c) REQUIREMENTS FOR IMPLEMENTATION OF POLICY.—(1) Not later than 180 days after the date of the enactment of this Act, the President shall submit to the Congress a report, in unclassified form, with a classified appendix if necessary, on the actions the United States has taken and the actions the United States plans to take during the succeeding 12-month period to implement each of the policy objectives set forth in this section.

(2) Not later than 180 days after the date of the enactment of this Act, the President shall submit to the Congress a report in unclassified form, with a classified appendix if necessary, which—

(A) addresses the implications of the adoption by the United States of a policy of no-first-use of nuclear weapons;

(B) addresses the implications of an agreement with the other nuclear weapons states to adopt such a policy; and

(C) addresses the implications of a verifiable bilateral agreement with the Russian Federation under which both countries withdraw from their arsenals and dismantle all tactical nuclear weapons, and seek to extend to all nuclear weapons states this zero option for tactical nuclear weapons.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "IAEA" means the International Atomic Energy Agency.

(2) The term "IAEA safeguards" means the safeguards set forth in an agreement between a country and the IAEA, as authorized by Article III(A)(5) of the Statute of the International Atomic Energy Agency.

(3) The term "non-nuclear weapon state" means any country that is not a nuclear weapon state.

(4) The term "Nuclear Non-Proliferation Treaty" means the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Washington, London, and Moscow on July 1, 1968.

(5) The term "nuclear weapon state" means any country that is a nuclear-weapon state, as defined by Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Washington, London, and Moscow on July 1, 1968.

(6) The term "weapons-usable fissile materials" means highly enriched uranium and separated or reprocessed plutonium.

(7) The term "policy of no first use of nuclear weapons" means a commitment not to initiate the use of nuclear weapons.

(8) The term "START II treaty" means the Treaty on Further Reductions and Limitations of Strategic Offensive Arms, signed by the United States and the Russian Federation on January 3, 1993.

SEC. 1044. SENSE OF CONGRESS RELATING TO THE PROLIFERATION OF SPACE LAUNCH VEHICLE TECHNOLOGIES.

(a) FINDINGS.—The Congress finds the following:

(1) The United States has joined with other nations in the Missile Technology Control Regime (MTCR) which restricts the transfer of missiles or equipment or technology that could contribute to the design, development or production of missiles capable of delivering weapons of mass destruction.

(2) Missile technology is indistinguishable from and interchangeable with space launch vehicle technology.

(3) Transfers of missile technology or space launch vehicle technology cannot be safeguarded in a manner that would provide timely warning of diversion for military purposes.

(4) It has been United States policy since agreeing to the guidelines of the Missile Technology Control Regime to treat the sale or transfer of space launch vehicle technology as restrictively as the sale or transfer of missile technology.

(5) Previous congressional action on missile proliferation, notably title XVII of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1738), has explicitly supported this policy through such actions as the statutory definition of the term "missile" to mean "a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems".

(6) There is strong evidence that emerging national space launch programs in the Third World are not economically viable.

(7) The United States has successfully dissuaded countries from pursuing space launch vehicle programs in part by offering to cooperate with them in other areas of space science and technology.

(8) The United States has successfully dissuaded other MTCR adherents, and countries who have agreed to abide by MTCR guidelines, from providing assistance to emerging national space launch programs in the Third World.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Congress supports the strict interpretation by the United States of the Missile Technology Control Regime concerning—

(A) the inability to distinguish space launch vehicle technology from missile technology under the regime; and

(B) the inability to safeguard space launch vehicle technology in a manner that would provide timely warning of its diversion to military purposes; and

(2) the United States and the governments of other nations adhering to the Missile Technology Control Regime should be recognized for—

(A) the success of such governments in restricting the export of space launch vehicle technology and of missile technology; and

(B) the significant contribution made by the imposition of such restrictions to reducing the proliferation of missile technology capable of being used to deliver weapons of mass destruction.

(c) DEFINITIONS.—In this section:

(1) The term "Missile Technology Control Regime" or "MTCR" means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto.

(2) The term "MTCR Annex" means the Guidelines and Equipment and Technology Annex of the Missile Technology Control Regime, and any amendments thereto.

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8. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE MOAKLEY OF MASSACHUSETTS, OR HIS DESIGNEE

Page 104, strike out section 343 (line 12 through page 105, line 2) and insert in lieu thereof the following:

SEC. 343. CONTINUATION OF CERTAIN PERCENTAGE LIMITATIONS ON THE PERFORMANCE OF DEPOT-LEVEL MAINTENANCE.

The Secretary of Defense shall ensure that the percentage limitations on the performance of depot-level maintenance of materiel set forth in section 2466 of title 10, United States Code, are adhered to. The Secretary of Defense may not enter into a contract for the performance exclusively by non-Federal Government personnel of any depot-level maintenance that is not required to be performed by employees of the Department of Defense under such section unless, prior to selecting the entity to perform the depot-level maintenance—

(1) the Secretary uses competitive procedures for the selection; and

(2) where appropriate, depot-level activities of the Department of Defense are eligible to compete for the depot-level maintenance.

Page 108, after line 3, insert the following new section:

SEC. 347. AUTHORITY TO WAIVE CERTAIN CLAIMS OF THE UNITED STATES.

(a) DESCRIPTION OF THE CLAIMS INVOLVED.—This section applies with respect to any claim of the United States against an individual which relates to a bonus or other payment awarded to such individual under a productivity gainsharing program based on work performed by such individual as an employee of the Naval Aviation Depot, Norfolk, Virginia, after September 30, 1988, and before October 1, 1992.

(b) WAIVER AUTHORITY AVAILABLE WITHOUT REGARD TO THE AMOUNT INVOLVED.—Notwithstanding the limitation set forth in section 2774(a)(2)(A) of title 10, United States Code, any waiver authority under section 2774(a)(2) of such title may be exercised, with respect to any claim described in subsection (a) of this section, without regard to the amount involved.

(c) DEFINITION.—For the purpose of this section, the term "productivity gainsharing program" means a productivity gainsharing program established under chapter 45 or section 5407 of title 5, United States Code, or Executive Order 12637 (31 U.S.C. 501 note).

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9. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE MOAKLEY OF MASSACHUSETTS, OR HIS DESIGNEE

At the end of subtitle D of title XIII (page 481, after line 25), insert the following new section:

SEC. 1344. REGIONAL RETRAINING SERVICES CLEARINGHOUSES.

(a) ESTABLISHMENT REQUIRED.—The Secretary of Labor, in consultation with the Secretary of Defense, shall carry out a demonstration project to establish one or more regional retraining services clearinghouses to serve eligible persons described in subsection (b).

(b) PERSONS ELIGIBLE FOR CLEARINGHOUSE SERVICES.—The following persons shall be eligible to receive services through the clearinghouses:

(1) Members of the Armed Forces who are discharged or released from active duty.

(2) Civilian employees of the Department of Defense who are terminated from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense.

(3) Employees of defense contractors who have been terminated or laid off (or receive a notice of termination or lay off) as a result of the completion or termination of a defense contract or program or reductions in defense spending, as determined by the Secretary of Defense.

(c) INFORMATIONAL ACTIVITIES OF CLEARINGHOUSES.—The clearinghouses shall—

(1) collect educational materials which have been prepared for the purpose of providing information to eligible persons regarding available retraining programs, in particular those programs dealing with critical skills needed in advanced manufacturing and skill areas in which shortages of skilled employees exist;

(2) establish and maintain a data base for the purpose of storing and categorizing such materials based on the different needs of eligible persons; and

(3) furnish such materials, upon request, to such educational institutions and other interested persons.

(d) FUNDING.—From funds made available under section 4465(c) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 29 U.S.C. 1662d–1 note) to carry out section 325A of the Job Training Partnership Act (29 U.S.C. 1662d–1), not more than $10,000,000 shall be available to the Secretary of Labor to carry out this section during fiscal year 1994. Funds made available under section 1302 for defense conversion, reinvestment, and transition assistance programs shall not be used to carry out this section.

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10. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE HALL OF OHIO, OR HIS DESIGNEE

At the end of title XXXI (page 589, after line 17), insert the following section:

SEC. 3139. TRANSFER OR LEASE OF PROPERTY AT DEPARTMENT OF ENERGY WEAPON PRODUCTION FACILITIES.

(a) FINDINGS.—Congress makes the following findings:

(1) The termination or reconfiguration of weapon production activities at facilities of the Department of Energy within the United States is a necessary consequence of the end of the Cold War and of changed United States national security requirements.

(2) A facility of the Department of Energy is a significant source of employment for many communities, and the closure or reconfiguration of such a facility may cause economic hardship for the workers and the communities.

(3) It is in the interest of the United States that the Federal Government facilitate the economic recovery of communities that experience adverse economic circumstances as the result of the closure or reconfiguration of a Department of Energy fa-

cility and, where possible, prevent the occurrence of adverse economic circumstances.

(4) It is in the interest of the United States that the Federal Government work with communities that experience adverse economic circumstances as the result of the closure or reconfiguration of Department of Energy facilities to identify and implement means of reutilizing or redeveloping such facilities in a beneficial manner.

(5) The Federal Government may provide such assistance by closing or reconfiguring such facilities and conveying the real property in a manner that best ensures environmental protection and the beneficial reutilization or redevelopment of such facilities by such communities.

(6) The Federal Government may best ensure such reutilization and redevelopment by making available real and personal property of the closing or reconfigured Department of Energy facilities to communities affected by such closures or reconfigurations on a timely basis, and, if appropriate, at less than fair market value.

(7) Preservation of the national technology and industrial base could be assisted by the appropriate transfer, lease, or reutilization of property, facilities, and equipment which currently are not needed for the Department of Energy weapon production mission.

(8) A delay in the transfer, lease, or reutilization of such property, facilities, and equipment for commercial use will reduce the national technology and industrial base because of lost skilled personnel and lost business opportunities.

(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary of Energy, with respect to property covered under subsection (d)—

(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484); and

(C) the authority of the Administrator to grant approvals and make determinations under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(2)(A) Subject to subparagraph (C), the Secretary of Energy shall exercise the authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

(i) all regulations in effect on the date of the enactment of this Act governing the utilization of excess property and the disposal of surplus property under the Federal Property and Administrative Services Act of 1949; and

(ii) all regulations in effect on the date of the enactment of this Act governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(B) The Secretary, after consulting with the Administrator of General Services, may issue regulations that are necessary to carry out the delegation of authority required by paragraph (1).

(C) The authority required to be delegated by paragraph (1) to the Secretary by the Administrator of General Services shall not include the authority to prescribe general policies and methods for utilizing excess property and disposing of surplus property.

(c) ADDITIONAL AUTHORITY TO TRANSFER AND LEASE.—(1) The Secretary of Energy may transfer or lease any or all right, title, and interest of the United States in and to the property referred to in subsection (d) to any public agency if the Secretary determines that such transfer or lease will mitigate the adverse economic consequences that might otherwise arise from the closure or reconfiguration of a Department of Energy facility.

(2)(A) The consideration to be paid to the United States for any transfer or lease under paragraph (1) shall be for the estimated fair market value of such property or leasehold interest, as determined by the Secretary of Energy, except that the Secretary may accept consideration for an amount that is not less than 50 percent of the estimated fair market value of such property if the Secretary determines that—

(i) the discount is required to implement the plans established in the report under subsection (i); and

(ii) 30 days after published notice, no private or public party has made a bona fide offer for such property at the estimated fair market value.

(B) The instrument transferring or leasing property for less than the estimated fair market value under this paragraph—

(i) shall contain a condition that all such property shall be used and maintained for the purpose for which it was transferred in perpetuity in accordance with the plans described in the report under subsection (i) or, in the case of a lease, for the term of the lease; and

(ii) may contain such additional terms, conditions, reservations, and restrictions as the Secretary determines to be necessary to safeguard the interests of the United States.

(C) The Secretary may—

(i) determine compliance with the terms, conditions, reservations, and restrictions contained in any instrument by which a transfer or lease of property is made;

(ii) reform, correct, or amend any such instrument by the execution of a corrective, reformative, or amendatory instrument where necessary to correct such instrument or to conform such transfer or lease to the requirements of applicable law; and

(iii)(I) grant releases from any of the terms, conditions, reservations, and restrictions contained in, and (II) convey, quitclaim, or release to the transferee any right or interest reserved to the United States by, any instrument by which such transfer or lease is made, if the Secretary determines that the property transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim will not prevent accomplishment of the purpose for which such property was so transferred.

Any such releases, conveyance, or quitclaim may be granted on, or made subject to, such terms and conditions as the Secretary consid-

ers necessary to protect or advance the interests of the United States.

(d) COVERED PROPERTY.—Property that may be transferred or leased under subsections (c) and (g) is the related personal property and acquired real property at a facility of the Department of Energy to be closed or reconfigured that the Secretary of Energy determines to be no longer necessary for weapon production or other missions of the Department.

(e) APPLICABILITY OF OTHER LAWS.—Property transferred or leased under subsections (c) and (g) shall be transferred or leased in accordance with—

(1) the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), to the extent not inconsistent with this section; and

(2) all applicable environmental laws, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(f) LIMITATION ON RELOCATION OF EQUIPMENT.—The Secretary shall not relocate equipment from a facility, such as machine tools that could be useful in converting the facility, except in cases where buying new equipment would be significantly more costly or significantly more time-consuming than moving the equipment. The Secretary shall establish guidelines for determining costs under this subsection.

(g) REUTILIZATION.—To the extent practicable, the Secretary of Energy may make available for reutilization a facility or property of the Department of Energy that is not required for weapon production work in any case in which the Secretary determines that such reutilization will—

(1) roduce the long-term cost to the Government, including the cost of worker displacement and retraining in the community in which the facility or property is located;

(2) contribute to the preservation of the national technology and industrial base by using the equipment at the facility or property; or

(3) assist the economic development in the community in which the facility or property is located.

(h) OTHER TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions with respect to a transfer or lease of property under subsection (c) as the Secretary determines appropriate to protect the interests of the United States.

(i) REPORT.—Not later than February 1, 1994, the Secretary of Energy shall submit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Government Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Committee on Energy and Commerce of the House of Representatives a report on the plans of the Secretary in accordance with applicable law for the reutilization of real property, facilities, equipment, and supplies at weapon production facilities of the Department of Energy that are planned or scheduled for the termination of weapon production activities.

(j) DEFINITION.—For purposes of this section, the term "reutilization" means the development of sites previously used in

the nuclear weapons complex of the Department of Energy for private commercial work or non-weapon production-related Government work. Such development may consist of—

(1) conversion of the site or portions of it to exclusively private or local government use;

(2) leasing of facilities or equipment to non-Department of Energy sources;

(3) use of Department of Energy facilities to enhance the national technology and industrial base through technology transfer and commercial work by Department of Energy contractors;

(4) development of a financial assistance arrangement with local communities to seek other uses for vacated or underutilized facilities;

(5) sale of all or portions of certain facilities to commercial concerns under terms that dictate economic development of the site; or

(6) any combination of paragraphs (1) through (5).

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11. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE GOODLING OF PENNSYLVANIA, OR HIS DESIGNEE

Page 367, after line 9, insert the following new section:

SEC. 1304. DISSEMINATION OF LIST OF CONVERSION, REINVESTMENT, AND TRANSITION PROGRAMS.

Section 4004(c) of the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (division D of Public Law 101–510; 104 Stat. 1849) is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3)(C) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(4) ensure that adequate means are available to disseminate to interested communities, businesses, and defense workers and members of the Armed Forces a list of the Federal economic adjustment programs described in the reports required under paragraph (3).".

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12. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE DELLUMS OF CALIFORNIA, OR REPRESENTATIVE SPENCE OF SOUTH CAROLINA, OR THEIR DESIGNEE

At the end of subtitle C of title X (page 346, after line 23), insert the following new sections:

SEC. 1043. COUNTERPROLIFERATION.

(a) IN GENERAL.—Chapter 20 of title 10, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER III—COUNTERPROLIFERATION

"Sec.
"415. International counterproliferation activities.
"416. Counterproliferation policy.
"417. Semiannual report.

"§ 415. International counterproliferation activities

"(a) ASSISTANCE FOR INTERNATIONAL COUNTERPROLIFERATION ACTIVITIES.—Subject to the limitations and requirements provided in this section, in order to support international activities with respect to the nonproliferation of weapons of mass destruction and their delivery systems, the Secretary of Defense, under the guidance of the President, may provide the assistance specified in subsection (b).

"(b) ACTIVITIES FOR WHICH ASSISTANCE MAY BE PROVIDED.—The following activities are authorized under this section:

"(1) Support of nonproliferation monitoring programs, nonproliferation inspection programs, and nonproliferation compliance programs, to include—

"(A) support of the United Nations Special Commission on Iraq for its inspection and long-term monitoring activities; and

"(B) support of activities of the International Atomic Energy Agency that are designed to ensure more effective safeguards against nuclear proliferation and more aggressive verification of compliance with the Treaty on the Non-Proliferation of Nuclear Weapons of July 1, 1968.

"(2) Monitoring and control of transfers of weapons of mass destruction, related technologies, and other sensitive goods and technologies.

"(3) Efforts to improve international cooperation in monitoring of nuclear weapons proliferation, nuclear security, and nuclear safety projects to combat the threat of nuclear theft, terrorism, or accidents, to include—

"(A) collaborative activities such as joint emergency response exercises, technical assistance, and training; and

"(B) joint technical projects and improved intelligence sharing.

"(4) Efforts to improve international capabilities and cooperation in deterring and responding to terrorism, theft, and proliferation involving weapons of mass destruction.

"(c) COORDINATION.—The President shall coordinate the activities described in subsection (b) with those authorized in section 504 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act (Public Law 102–511; 22 U.S.C. 5854).

"(d) SOURCES OF ASSISTANCE.—Supplies and equipment provided as assistance under this section may be provided, by loan or donation, from existing stocks of the Department of Defense and the Department of Energy.

"(e) PRIOR NOTICE TO CONGRESS.—Not less than 15 days before providing assistance under this section, the Secretary of Defense shall transmit to the appropriate congressional committees a report on the proposed assistance. Each report shall specify—

"(1) the forms of assistance the Secretary of defense proposes to provide;

"(2) the recipient of the proposed assistance;

"(3) the propesed involvement of United States Government departments and agencies in providing such assistance; and

"(4) the amount of funds proposed to be obligated by the Department of Defense in order to provide such assistance.

"(f) DEFINITIONS.—In this section:

"(1) The term 'weapons of mass destruction' includes nuclear, radiological, chemical, and biological weapons.

"(2) The term 'delivery system' means a ballistic missile, manned or unmanned air vehicle, or cruise missile that (A) is capable of delivering a 500 kilogram payload to a range of 300 kilometers, or (B) is intended to deliver weapons of mass destruction regardless of range or payload.

"§ 416. Counterproliferation policy

"(a) PROGRAMS.—The Secretary of Defense may conduct counterproliferation policy research and analysis programs as described in subsection (b) to support the counterproliferation activities of the Department of Defense.

"(b) COUNTERPROLIFERATION EFFORTS.—Such counterproliferation policy research and analysis may include programs intended to explore defense policy issues that might be involved in efforts to prevent and counter the proliferation of weapons of mass destruction and their delivery systems. Such efforts include—

"(1) enhancing United States military capabilities to deter and respond to terrorism, theft and proliferation involving weapons of mass destruction;

"(2) cooperating in international programs to enhance military capabilities to deter and respond to terrorism, theft and proliferation involving weapons of mass destruction; and

"(3) otherwise contributing to Department of Defense capabilities to deter, identify, monitor and respond to such terrorism, theft and proliferation involving weapons of mass destruction.

"(c) DESIGNATION OF COORDINATOR.—The Secretary of Defense shall designate the Under Secretary of Defense for Policy to coordinate the research of the Department of Defense on countering proliferation of weapons of mass destruction and their delivery systems.

"§ 417. Semiannual report

"(a) REPORT.—Not later than April 30 of each year, and not later than October 30 of each year, the Secretary of Defense shall submit to the committees of Congress named in subsection (b) a report on the activities carried out under sections 415 and 416 of this title. Each report shall set forth for the preceding six-month period the following:

"(1) For activities carried out under section 415 of this title—

"(A) a description of the assistance provided;

"(B) the recipients of that assistance; and

"(C) a description of the participation of the Department of Defense and other Federal agencies in providing the assistance.

"(2) For activities carried out under section 416 of this title—

"(A) a description of the research and analysis carried out;

"(B) the amounts spent for such research and analysis;

"(C) the organizations that conducted the research and analysis;

"(D) an explanation of the extent to which such research and analysis contributes to enhancing United States military capabilities to deter and respond to terrorism, theft, and proliferation involving weapons of mass destruction; and

"(E) a description of the measures being taken to ensure that such research and analysis within the Department of Defense is effectively managed and comprehensively coordinated.

"(b) CONGRESSIONAL COMMITTEES.—The committees of Congress to which reports under subsection (a) are to be submitted are—

"(1) the Committee on Armed Service, the Committee on Appropriations, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

"(2) The Committee on Armed Services, the Committee on Appropriations, the Committee on Foreign Affairs, and the Select Committee on Intelligence of the House of Representatives.".

(b) FISCAL YEAR 1994 FUNDING.—(1) In addition to funds otherwise available, funds for assistance authorized under section 415 of title 10, United States Code (as added by subsection (a)), for fiscal year 1994 shall be derived from amounts authorized in section 301(5) and shall not exceed $25,000,000. None of such assistance for fiscal year 1994 may be provided in the form of cash contributions.

(2) Funds for counterproliferation policy research and analysis programs for fiscal year 1994 under section 416 of title 10, United States Code (as added by subsection (a)), shall be derived from amounts appropriated in fiscal year 1994 for Defense-wide Activities and shall not exceed $6,000,000.

(c) RESTRICTION.—Note of the funds authorized in section 301(5) shall be available for the purposes stated in sections 415 or 416 of title 10, United States Code (as added by subsection (a)), until 15 days after the date on which the Secretary of Defense has submitted to the appropriate congressional committees a report setting forth—

(1) a description of all the activities within the Department of Defense that are being carried out or are to be carried out with the purposes described in sections 415 and 416 of title 10, United States Code (as added by subsection (a));

(2) the plan for coordinating and integrating these activities within the Department of Defense; and

(3) the plan for coordinating and integrating these activities with those of other Federal agencies.

(d) CLERICAL AMENDMENT.—The table of subchapters at the beginning of chapter 20 of title 10, United States Code, is amended by adding at the end the following new item:

"III. Counterproliferation .... 415".

SEC. 1044. REPORT REQUIREMENT.

(a) EFFECT OF INCREASED USE OF DUAL-USE TECHNOLOGIES ON ABILITY TO CONTROL EXPORTS.—Not later than six months after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report assessing what effect the in-

creased use of dual-use and commercial technologies and items by the Department of Defense could have on the ability of the United States to control adequately the export of sensitive dual-use and military technologies and items to nations to whom the receipt of such technologies is contrary to United States national security interests.

(b) CONSULTATION.—The report required by subsection (a) shall be prepared in consultation with the Director of Central Intelligence.

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13. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE COPPERSMITH OF ARIZONA, OR REPRESENTATIVE SHARP OF INDIANA, OR REPRESENTATIVE ZIMMER OF NEW JERSEY, OR THEIR DESIGNEE

At the end of subtitle C of title XXXI (page 589, after line 17), insert the following new section:

SEC. 3139. PROHIBITION ON USE OF FUNDS FOR ADVANCED LIQUID METAL REACTOR.

No funds authorized pursuant to this title or otherwise available for fiscal year 1994 or any previous fiscal year for the national security programs of the Department of Energy shall be used for the support of the advanced liquid metal reactor.

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14. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE HOAGLAND OF NEBRASKA, OR HIS DESIGNEE

Strike out section 942 (page 311, line 11, through page 312, line 12).

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15. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE MEEHAN OF MASSACHUSETTS

At the end of subtitle A of title II (page 42, after line 23), insert the following new section:

SEC. 203. REALLOCATION OF CERTAIN R&D FUNDS.

(a) INCREASE IN AMOUNT FOR ARMY.—The amount provided in section 201 for the Army is hereby increased by $44,000,000, of which—

(1) $20,000,000 is for the incorporation of an electronics software upgrade into the M1A2 tank; and

(2) $24,000,000 is for Horizontal Battlefield Integration to verify the compatibility of digital electronics in various Army Combat Systems.

(b) REDUCTION IN AMOUNT FOR DEFENSE-WIDE ACTIVITIES.—The amount provided in section 201 for Defense-wide activities is hereby reduced by $44,000,000, to be derived from amounts for acquisition of foreign equipment for test and analysis purposes.

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16. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE MEEHAN OF MASSACHUSETTS, OR HIS DESIGNEE

At the end of title X (page 346, after line 23), insert the following new section:

SEC. _____. THEATER MISSILE DEFENSE BURDENSHARING.

(a) REQUIREMENT TO ESTABLISH ANNUAL TMD LEVEL.—The Congress shall establish by law for each fiscal year (beginning with fiscal year 1995) the level of new obligational authority (stated as a single dollar amount) for research, development, test, and evaluation and for procurement for Theater Missile Defense programs of the Department of Defense for that fiscal year.

(b) LIMITATION ON UNITED STATES SHARE.—(1) Not more than 60 percent of the amount established pursuant to subsection (a) for any fiscal year may be provided from amounts appropriated to the Department of Defense from the general fund of the Treasury, and no appropriation may be made to the Department of Defense for any fiscal year which would cause the total amount appropriated for that fiscal year for research, development, test, and evaluation and for procurement for Theater Missile Defense programs of the Department of Defense to exceed 60 percent of such amount.

(2) Any additional funds for research, development, test, and evaluation and for procurement for Theater Missile Defense programs for any fiscal year for which an amount has been established pursuant to subsection (a) shall be derived from the Theater Missile Defense Cooperation Account under section 2609 of title 10, United States Code, as added by subsection (d).

(c) PRESIDENTIAL WAIVER AUTHORITY.—(1) The President may waive the limitation in subsection (b) for any fiscal year if the President determines that such a waiver is essential to national interests of the United States.

(2) Whenever the President makes a determination described in paragraph (1) for any fiscal year and determines to waive the limitation in subsection (b) for that fiscal year, the President shall submit to Congress a report stating that the President has made such a determination and providing a specific and detailed rationale for such determination.

(3) A waiver under this subsection may not take effect until 15 days after the date on which the report under paragraph (2) with respect to the waiver is received by Congress.

(d) FUND FOR ALLIES CONTRIBUTIONS.—(1) Chapter 155 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2609. Theater Missile Defense: acceptance of contributions from allies; Theater Missile Defense Cooperation Account

"(a) ACCEPTANCE AUTHORITY.—The Secretary of Defense may accept from any allied foreign government or any international organization any contribution of money made by such foreign government or international organization for use by the Department of Defense for Theater Missile Defense programs.

"(b) ESTABLISHMENT OF THEATER MISSILE DEFENSE COOPERATION ACCOUNT.—(1) There is established in the Treasury a special account to be known as the 'Theater Missile Defense Cooperation Account'.

"(2) Contributions accepted by the Secretary of Defense under subsection (a) shall be credited to the Account.

"(c) USE OF THE ACCOUNT.—(1) Funds in the Account are hereby made available for obligation for research, development, test, and evaluation, and for procurement, for Theater Missile Defense programs of the Department of Defense.

"(d) INVESTMENT OF MONEY.—(1) Upon request by the Secretary of Defense, the Secretary of the Treasury may invest money in the Account in securities of the United States or in securities guaranteed as to principal and interest by the United States.

"(2) Any interest or other income that accrues from investment in securities referred to in paragraph (1) shall be deposited to the credit of the Account.

"(e) NOTIFICATION OF CONDITIONS.—The Secretary of Defense shall notify Congress of any condition imposed by the donor on the use of any contribution accepted by the Secretary under the authority of this section.

"(f) ANNUAL AUDIT BY GAO.—The Comptroller General of the United States shall conduct an annual audit of money accepted by the Secretary of Defense under this section and shall submit a copy of the results of each such audit to Congress.

"(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2609. Theater Missile Defense: acceptance of contributions from allies; Theater Missile Defense Cooperation Account.".

(e) EFFECTIVE DATE.—Section 2609 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1993.

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17. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE HALL OF TEXAS, OR HIS DESIGNEE

At the end of subtitle A of title VII (page 227, after line 7), insert the following new section:

SEC. 703. SPECIAL PHARMACEUTICAL PROGRAM FOR CERTAIN COVERED BENEFICIARIES.

(a) PROVISION BY MAIL OR PRESCRIPTION CARD REQUIRED.—(1) Chapter 55 of title 10, United States Code, is amended by inserting after section 1074c the following new section:

"§ 1074d. Pharmaceutical program for certain covered beneficiaries

"(a) PROVISION BY MAIL OR PRESCRIPTION CARD.—The Secretary of Defense, in consultation with the other administering Secretaries, shall establish a program to provide prescription pharmaceuticals to eligible persons described in subsection (b) by the following methods:

"(1) Prescription pharmaceuticals by mail in connection with medical care furnished to such persons through facilities of the uniformed services under this chapter.

"(2) Prescription pharmaceuticals obtainable through use of a prescription card acceptable at retail pharmacies in the communities in which such persons reside.

"(b) ELIGIBLE PERSONS.—A person eligible to obtain pharmaceuticals under the program established under subsection (a) is any person who would be eligible for medical care under a contract for medical care entered into under section 1086 of this title except for operation of subsection (d)(1) of such section.

"(c) PHARMACEUTICALS OFFERED; PURCHASE FEES.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall—

"(A) determine the pharmaceuticals that may be obtained by eligible persons under the program established under subsection (a); and

"(B) establish an appropriate fee, charge, or copayment to be paid by such persons for pharmaceuticals obtained under the program.

"(2) Fees, charges, or copayments required under paragraph (1) may not exceed the fees, charges, or copayments established under subsection (d) of section 702 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 1079 note) for participation in the pharmaceutical demonstration project established under subsection (a) of such section or the retail pharmacy network included in a managed health care program under subsection (b) of such section.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1074c the following new item:

"1074d. Pharmaceutical program for certain covered beneficiaries.".

(b) OPERATION OF PROGRAM.—The Secretary of Defense shall ensure that the program to provide pharmaceuticals required by section 1074d of title 10, United States Code, as added by subsection (a), is in nation-wide operation not later than 180 days after the date of the enactment of this Act.

○

103D CONGRESS
1st Session } HOUSE OF REPRESENTATIVES { REPORT
103–253

LIMITS ON ERISA PREEMPTION OF CERTAIN STATE LAWS

SEPTEMBER 22, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FORD of Michigan, from the Committee on Education and Labor, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 1036]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 1036) to amend the Employee Retirement Income Security Act of 1974 to provide that such Act does not preempt certain State laws, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. ERISA PREEMPTION RULES NOT TO APPLY TO CERTAIN ADDITIONAL STATE LAWS

Section 514(b) of the Employee Retirement Income Act of 1974 (29 U.S.C. 1144(b)) is amended by adding at the end the following new paragraph:

"(9) Subsection (a) shall not apply to——

"(A) any provision of State law to the extent that such provision requires the payment of prevailing wages, including employee benefits, on public projects and permits any prevailing employee benefit plan contribution or cost requirement of such law to be met by crediting——

"(i) the payment of employee benefit plan contributions or costs,

"(ii) the payment of wages in lieu of such contributions or costs, or

"(iii) the payment of a combination of wages and such contributions or costs;

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except that this subparagraph shall not be construed to exempt from subsection (a) any such provision to the extent it otherwise mandates the maintenance of, or otherwise regulates the benefits or operations of, any employee benefit plan;

"(B) any provision of State law to the extent that such provision——

"(i) establishes minimum standards for the certification or registration of apprenticeship or other training programs,

"(ii) concerns the establishment, maintenance, or operation of a certified or registered apprenticeship or other training program, or

"(iii) makes certified or registered apprenticeship or other training an occupational qualification,

and does not conflict with any right, requirement, or duty established under this title; or

"(C) any provision of State law to the extent that such provision provides for a mechanics' lien or other lien, bonding, or other security for the collection of delinquent contributions to a multiemployer plan.".

SEC. 2. EFFECTIVE DATE

The amendment made by section 1 shall take effect on the date of the enactment of this Act and shall apply to matters with respect to which actions are pending on or after such date.

PURPOSE

The purpose of H.R. 1036 is to amend section 514(b) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1144(b)) to provide that the Act does not preempt State and local laws which provide for the payment of prevailing wages; establish minimum standards for the certification or registration of apprenticeship or other training programs; govern the establishment, maintenance, or operation of a certified or registered apprenticeship or other training program; make certified or registered apprenticeship or other training an occupational qualification; or provide for a mechanics' lien or other lien, bonding, or other security for the collection of delinquent contributions to multiemployer pension, health and welfare plans.

COMMITTEE ACTION

Legislative action in the 103d Congress

On February 23, 1993, Representative Howard L. Berman of California introduced H.R. 1036, which was referred to the Committee on Education and Labor. H.R. 1036 has 126 cosponsors.

On March 24, 1993, the Subcommittee on Labor-Management Relations held a legislative hearing on the bill. Testimony was received from the Honorable Thomas P. Foley, Secretary of Labor and Industry from the Commonwealth of Pennsylvania, and from representatives of the Building and Construction Trades Department, AFL–CIO, the Southern California District Council of Carpenters, and the National Association of Manufacturers.

On June 23, 1993, the Committee on Education and Labor considered H.R. 1036. Subcommittee Chairman Pat Williams offered an amendment in the nature of a substitute containing clarifying and technical changes to the introduced bill. Representative Harris Fawell offered an amendment to the Williams substitute which would have struck the provisions preserving State apprenticeship and training laws from ERISA's preemption provisions. The Fawell amendment, which was identical to the amendment Representative Fawell offered on the House floor in the previous Congress, was de-

feated by voice vote. The Williams substitute was approved by voice vote.

A quorum being present, the Committee on Education and Labor then ordered the bill, as amended, favorably reported by a 30–12 vote, with 25 members voting in person.

Legislative action in the 102d Congress

On June 26, 1991, Representative Howard L. Berman of California introduced H.R. 2782, which was referred to the Committee on Education and Labor.

On July 1, 1991, the Subcommittee on Labor-Management Relations held a legislative hearing on H.R. 2782 and another ERISA preemption bill, H.R. 1602. Testimony on H.R. 2782 was received from Representative Howard L. Berman, from the Honorable Thomas F. Hartnett, New York State Labor Commissioner, and from representatives of the Building and Construction Trades Department, AFL–CIO, and the National Association of Manufacturers.

The subcommittee met to consider H.R. 2782 on September 25, 1991, and approved the bill by a 15–7 vote. On June 10, 1992, the Committee on Education and Labor ordered the bill favorably reported by a voice vote, a quorum being present. At the time of the committee's action, H.R. 2782 had more than 160 cosponsors.

On August 4, 1992, the House took up H.R. 2782. Two floor amendments were adopted by voice vote: (1) a perfecting amendment offered by Representative Paul Henry and supported by the floor manager of the bill, subcommittee Chairman Pat Williams and the bill's original sponsor, Representative Howard Berman, relating to State prevailing wage laws; and (2) a clarifying amendment offered by Representative Marge Roukema relating to the application of ERISA's fiduciary requirements. An amendment offered by Representative Harris Fawell to delete the provisions in H.R. 2782 preserving State apprenticeship and training laws from ERISA preemption was defeated by a vote of 140–266. H.R. 2782, as amended, passed the House by voice vote.

Summary

BACKGROUND AND NEED FOR LEGISLATION

ERISA preemption generally

In enacting section 514 of the Employee Retirement Income Security Act of 1974 (ERISA), Congress intended to shield employee benefit plans from dual Federal and State regulation by broadly preempting State laws.

ERISA section 514(a) provides that, with certain specified exceptions, ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." This statutory provision reflects a Congressional judgment to reserve "to Federal authority the sole power to regulate the field of employee benefit plans . . . [and thereby] round out

the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation."[1]

In remarks on the Senate floor when that body considered the Conference Report on H.R. 2, Senator Jacob Javits described the process that led to the adoption of such sweeping language as follows:

> Both House and Senate bills provided for preemption of State law, but—with one major exception appearing in the House bill—defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with one particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme.[2]

At the same time, however, the framers of ERISA recognized that the preemption language they adopted might be so broad as to have unforeseen and unintended consequences. Senator Javits anticipated the possible future dilemmas that might result and had a commonsense remedy:

> If it is determined that the preemption policy devised has the effect of precluding essential legislation at either the State or Federal level, appropriate modifications can be made.[3]

In fact, one of the tasks earmarked for the Joint Pension, Profit-sharing, and Employee Stock Ownership Plan Task Force, which was authorized to be established under section 3021 of ERISA, was examining "the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans." (ERISA section 3022(a)(5).) Unfortunately, this Joint Task Force was never established, and, therefore, Congress has never returned to examine the effect of preemption in a systematic or comprehensive manner.

Instead, Congress has generally allowed the courts to consider and flesh out the boundaries of ERISA preemption. On occasion, however, when the courts have gone significantly beyond what was intended by Congress, the need for broad ERISA preemption has been reconsidered on an issue by issue basis.

In recent years, the Federal courts have exhibited a disturbing tendency to uphold challenges to State laws establishing important worker protections on the basis of ERISA preemption, in spite of strong legal and policy evidence that Congress never intended these laws to be preempted. Among these are State laws affecting prevailing wages, apprenticeship and training, remedies for unfair claim practices for insured health plans, workers' compensation,

[1] 120 Cong. Rec. 29197 (1974) (remarks of Rep. John Dent, Chairman of the Subcommittee on Labor Standards of the Committee on Education and Labor). *See also*, 120 Cong. Rec. 29933, 29942 (1978) (remarks of Sen. Williams and Sen. Javits, respectively).

[2] 120 Cong. Rec. 29944 (1974) (remarks of Sen. Javits).

[3] Id.

family leave, and mechanics' liens and other enforcement tools for multiemployer plans to collect delinquent pension contributions.

Although the committee has under consideration separate legislation to assure that other worker protections are not undermined by erroneous interpretations of ERISA's preemption clause, H.R. 1036 addresses only three types of State laws that have been nullified by the courts.

There is no evidence that anyone in Congress at the time ERISA was enacted anticipated that it would be extended to preempt any of these three traditional areas of State regulation. There is no indication, for example, that Congress intended ERISA to interfere with the traditional right and power of State and local authorities to determine the terms and conditions under which they contract for public services or construction or set minimum wage levels. To the contrary, ERISA section 514(c)(1) defined the term "State" to include "a State, any political subdivision thereof, or any agency or instrumentality of either, *which purports to regulate,* directly or indirectly, the terms and conditions of employee benefit plans covered by [ERISA]." (Emphasis added). In short, Congress was concerned about States as overzealous regulators, not about States as consumers of goods and services.[4]

However, some recent court decisions have missed this important distinction, and have deprived State and local authorities of their traditional right and power to contract for public works, contrary to congressional intent, thus necessitating this legislation to restore the States' rights and powers.

State Prevailing Wage Laws

Thirty-one States have enacted prevailing wage laws with respect to employment on construction and other projects funded or financed, in whole or in part, by State or local moneys.[5] These laws typically provide that contractors or subcontractors seeking to perform work on a publicly financed project must agree to pay their workers not less than the dollar value of cash wages and employee benefits prevailing in the locality of the project. Recognizing that health insurance, pensions, training, and similar benefits have become an important form of employee compensation along with cash wages, many prevailing wage laws include the value or cost of employee benefits in the determination of prevailing wages.

The purposes of these State prevailing wage laws typically include: (1) to protect local wage standards by preventing contractors

[4] This important distinction between government as regulator and government as proprietor was recently drawn by a unanimous Supreme Court in an analogous setting in *Building and Construction Trades Council v. Associated Builders & Contractors,* U.S. , 113 S.Ct. 1190 (March 8, 1993). The Court stated: "In the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and where analogous private conduct would be permitted, this Court will not infer such a restriction."

[5] Alaska, Arkansas, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Washington, West Virginia, Wisconsin, and Wyoming.

The type of work covered by these public prevailing wage laws varies by State, and in some States includes projects financed, in whole or in part, by public moneys, projects financed by public bonds or industrial development bonds, projects financed with public guarantees, projects constructed or undertaken pursuant to a contract with a public agency, or on land provided by a public agency, and projects which are to be dedicated or leased to a public agency or public use upon completion of construction.

from basing their bids for public buildings, works or services on wages lower than those prevailing in the area; (2) to equalize competition among all contractors in bidding on public buildings and works projects by equalizing labor costs; and (3) to maintain quality work standards.

In *General Electric Co. v. New York State Department of Labor*,[6] a Federal court of appeals panel held that New York State's prevailing wage law is preempted by ERISA to the extent that it requires all bidders on public works contracts to assume the cost of prevailing "fringe" (i.e., employee) benefits in the locality of the projects, in addition to paying the prevailing cash wages, even though the law permits contractors to pay workers the cash equivalent of the benefits instead of providing the benefits. The court reasoned that this aspect of the New York law relates to ERISA plans because, as it read the law, public works contractors would have to bring their employee benefit plans into conformity with prevailing plans or make up the difference through cash payments to their employees.[7]

A dissenting judge on the panel concluded that the majority opinion overstated the impact of the State law, noting:

> Federal preemption under ERISA does not sweep so broadly that it invalidates a State law governing labor costs that neither regulates employee benefit plans nor affects, directly or indirectly, a plan's primary administrative function. . . . New York's prevailing wage law . . . does not interfere with any of the primary administrative functions of ERISA plans; it does not affect the structure or administration of benefit plans; it does not determine an employee's eligibility for benefits; nor does it control the type or level of benefits provided. Rather, the law seeks to equalize the minimum labor costs for employers bidding on public works contracts. It accomplishes this goal, in part, by requiring contractors to give their employees the cash equivalent of what it would cost them to provide the wage 'supplements' (that is, all fringe benefits, regardless of whether they are covered by ERISA) prevailing in the locality where the work is to be performed. . . .
>
> . . . New York's prevailing wage statute is a law of general application whose tangential effects on employee benefit plans are negligible and wholly incidental to the law's primary purpose.[8]

The court's decision cut a gaping hole in New York's century-old public policy of requiring the payment of prevailing wages on public works—a policy which, for 36 years, has included an express statutory requirement that the cost of prevailing employee benefits be considered in determining the prevailing wage.

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[6] 891 F.2d 25 (2d Cir. 1989), *cert. den.*, 496 U.S. 912 (1990).

[7] The court also concluded, correctly, that the New York prevailing wage law is not preempted by the National Labor Relations Act.

[8] 891 F.2d at 30 (Pratt, J. dissenting). To similar effect is *Minnesota ABC v. Minnesota Department of Labor and Industry*, Civ. No. 4–92–564 (U.S.D.C. D. Minn. April 23, 1993) (Minnesota prevailing wage law not preempted); *ABC v. Curry*, 797 F. Supp. 1528, 1535–38 (N.D. Cal. 1992)(California prevailing wage law not preempted).

In 1991, New York State Labor Commissioner Hartnett testified before the Subcommittee on Labor-Management Relations that:

> Without such a law, the State could not assure that the workers building its schools, roads and bridges would be well-trained and well-paid. It could not assure to union and non-union employers, local and non-local contractors, a level playing field—an opportunity to bid competitively and honestly for public contracts. . . .
>
> As a result of this ruling [in the General Electric case], our ability to control unfair bidding, assure a minimum level of compensation for public work employees and maintain high construction standards on public jobs has also been effectively preempted. . . .
>
> The effect of the General Electric case, and similar ERISA preemption decisions nullifying worker protection laws of other States is to allow certain employers on public work jobs to pay their employees a total compensation package significantly below the prevailing rate. Organized labor has estimated that this could result in many workers receiving up to 30 percent less than the actual prevailing wage. . . .
>
> Such a result completely undermines the public policy considerations behind State prevailing wage statutes by prejudicing contractors bound by collective bargaining agreements who have no choice but to pay prevailing wages and supplements.[9]

The wide-ranging effect of the *General Electric* decision on the prevailing wage laws and public policies of other States was confirmed by Pennsylvania's Secretary of Labor and Industry, Thomas P. Foley, in his March, 1993 testimony before the Subcommittee on Labor-Management Relations:

> Recently, however, some Federal courts have relied upon this preemption provision to undermine State prevailing wage laws. Using the theory that fringe benefit provisions in the prevailing wage laws are an example of impermissible State "regulation" under the terms of ERISA—these cases have invalidated parts of the States' prevailing wage laws. As a result, State government efforts to regulate wage standards on State and local public works projects have been seriously weakened. States are less able to protect workers from unscrupulous construction employers or to maintain a level playing field for contractors who engage in the competitive bidding process that is part and parcel of any public works project. This has occurred even though, in my judgment, the Pennsylvania State prevailing wage law does not purport to "regulate," as that term is defined in ERISA, these fringe benefit plans.
>
> In 1988, the Ninth Circuit Court of Appeals held that portions of the State of Washington's prevailing wage law were preempted by ERISA (*Local Union 588, Plumbers*

[9] Hearings on H.R. 1602 and H.R. 2782: Bills relating to ERISA's Preemption of Certain State Laws Before the Subcom. on Labor-Management Relations of the House Comm. on Educ. and Labor, 102d Cong., 1st Sess. 34–35 (1991) (statement of Thomas F. Hartnett).

and Pipefitters Industry Journeymen and Apprentices Training Fund v. J.A. Jones Construction Company, et al., 846 F.2d 1213 (1988), *aff'd*. 488 U.S. 881 (1988)). In 1989, New York's prevailing wage law was preempted by the Second Circuit, again on the theory that portions of the New York law improperly operated to prescribe the type and amount of an employer's contribution to an ERISA plan, the rules and regulations under which such plans operate and the nature and amount of benefit provided. *General Electric Company v. New York State Department of Labor*, 891 F.2d 25 (2d Cir. 1989). The *General Electric* decision went further, ruling that even the filing of wage schedules and the State inspection of records are preempted where ERISA plans are involved. In New York, State prevailing wage inspectors are not permitted to verify contributions made to ERISA plans where contractors claim credit for such contributions. The effect of this ruling is to take the teeth out of the State prevailing wage law.

In Pennsylvania, lawsuits based on the reasoning in the New York and State of Washington cases are pending in Federal court.

What we need now is clarification. We believe that two Federal courts have over-extended their application of the preemption provision, using it to force States to exclude fringe benefits from the calculations of compensation in the construction industry.

The Pennsylvania Department of Labor and Industry is charged with the responsibility of enforcing our State's prevailing wage law. I believe that our statute, and similar laws in other States, aid in providing a level-playing field in the public works bidding process. If H.R. 1036 does not become law, unethical contractors will be able to commit serious abuses.

In asking for passage of this bill, I am asking that States be given the same ability in enforcing their prevailing wage laws as the Federal government enjoys in enforcing Davis-Bacon wage rates. [10]

In addition to undercutting local labor conditions and placing fair contractors at a competitive disadvantage, *General Electric* and its progeny have had another effect which runs counter to the purposes and policies of ERISA. By removing the employee benefits component from the prevailing wage calculation, these court decisions create a disincentive for contributions to collectively-bargained, multiemployer pension, health and welfare plans. This disincentive, together with the competitive advantage given to employers without collective-bargaining obligations, causes a decline in the contribution income of these plans. The committee heard testimony that ERISA preemption of California's prevailing wage laws will cause workers' benefit plans to lose at least 30 percent of their contribution income and diminish the ability of these plans to pay

[10] *Hearing on H.R. 1036: A Bill relating to ERISA's Preemption of Certain State Laws Before the Subcom. on Labor-Management, House Comm. on Education and Labor*, 103d Cong., 1st Sess. (1993) (Statement of Rep. Thomas P. Foley).

benefits; the opposite effect of that which the drafters of ERISA and the 1980 multiemployer plan amendments had in mind.

This misreading of ERISA by the U.S. Court of Appeals for the Second Circuit and other courts can be corrected—and the traditional right of the States to set the terms and conditions of their public works, construction, and service contracts can be restored—only by legislation clarifying ERISA's preemption provisions.

State Apprenticeship Training Laws

Workforce training has taken on renewed importance in the Nation's economic planning for the 1990s and beyond. But, in fact, we have had a national policy of fostering apprenticeship and training since the 1937 enactment by Congress of the National Apprenticeship Act, commonly known as the Fitzgerald Act.[11]

Under the Fitzgerald Act, the promotion, protection and standards of apprenticeship have been and remain a joint Federal-State responsibility. The Department of Labor has issued regulations implementing the Act.[12] Under these regulations, the Department's Bureau of Apprenticeship and Training (BAT) recognizes State agencies meeting certain guidelines as having the exclusive power to review, approve and register apprenticeship programs. These agencies are known as State Apprenticeship Councils or "SACs." Twenty-seven States, plus the District of Columbia and Puerto Rico, have chosen to regulate apprenticeship on a State level through comprehensive State apprenticeship laws.[13] These States have BAT-approved SACs. The other twenty-three States have chosen not to establish comprehensive State apprenticeship laws meeting the BAT's guidelines. In these States, formal registration of apprentices is a Federal responsibility. But, even these non-SAC States without comprehensive apprenticeship laws regulate apprenticeship to some extent. It has been estimated that there are thousands of State-sanctioned apprenticeship programs training 250,000 apprentices around the country.

These State apprenticeship laws, like prevailing wage laws, typically require contractors on public works projects to meet State and local requirements concerning the training, employment, and compensation of apprentices used on such projects and the financing of their training projects. These laws, like the prevailing wage laws, are exercises of the traditional right and power of State and local governments to set the terms and conditions under which they contract for public works. Indeed, some apprenticeship standards are codified among, or referred to by, State prevailing wage laws, reflecting some overlap of purpose, although they remain distinct concepts, however labeled.

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[11] Codified at 29 U.S.C. 1950, which provides as follows: "The Secretary of Labor is authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to being together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship . . ."

[12] 29 CFR section 29.1, *et seq*. (1992).

[13] Arizona, California, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Washington, and Wisconsin.

Despite the longstanding and still vital Federal-State scheme envisioned by the Fitzgerald Act, and the lack of Congressional intent to preempt the States' contractual rights, the U.S. Court of Appeals for the Ninth Circuit held in *Hydrostorage, Inc. v. Northern California Boilermakers Local Joint Apprenticeship Committee*[14] that ERISA preempted a State administrative order issued by the California Apprenticeship Council which required a contractor to meet State apprenticeship standards in order to perform work on a State public works project. The standards related to the number, training and conditions of employment of apprentices on public works projects, and required contributions to their training programs or the Council. The order was in accordance with the California Labor Code which requires contractors and subcontractors awarded public contracts in the State to apply to the joint apprenticeship committee in the area of the project for a certificate of compliance with the local apprenticeship standards as approved by the State's Division of Apprenticeship Standards.

The court reasoned that the State-approved apprenticeship standards constituted an ERISA-covered employee benefit plan and that the administrative order both related to and purported to regulate this plan by compelling a public works contractor to comply with the standards. The court also rejected the argument that the order was not preempted because ERISA section 514(d) saves from preemption or impairment other Federal laws and the State administrative order was issued pursuant to the Fitzgerald Act's scheme.

The *Hydrostorage* decision and similar erroneous court rulings on other State apprenticeship standards laws[15] are devastating this Nation's system for the training and employment of apprentices by substantially removing the States from the joint Federal-State scheme that has been in place for 55 years. As applied to public works projects, these court decisions also have deprived State and local governments of their traditional authority to determine the conditions under which they will expend public moneys for public building and works.

These court decisions come at a time when the administration and the Congress have noted the critical need for upgrading the skills of the American workforce through improved training to meet the competitive challenges facing our Nation. Apprenticeship programs like those invalidated by the courts under the guise of ERISA preemption have proven effective in producing prepared, skilled workers.

Legislation is needed to overturn the *Hydrostorage* decision and its progeny, to restore the States' important role in apprenticeship

[14] 891 F.2d 719 (9th Cir. 1989), *cert. den.*, 498 U.S. 822, 111 S.Ct. 72 (1990).

[15] *See, e.g., National Elevator Industry, Inc. v. Calhoon*, 957 F.2d 1555 (10th Cir. 1992) (Oklahoma); *Electrical Joint Apprenticeship Committee v. McDonald*, 949 F.2d 270 (9th Cir. 1991)(Nevada); *Boise Cascade Corp. v. Peterson*, 989 F.2d 632 (8th Cir. 1991)(Minnesota); *Local Union 598, Plumbers & Pipefitters v. J.A. Jones Const. Co.*, 846 F.2d 1213 (9th Cir. 1988) (Washington). The *McDonald* decision, *Southern California ABC v. California Apprenticeship Council*, 4 Cal. 4th 422, 841 P.2d 1011 (Cal. Sup. Ct. 1992), and ABC v. Curry, 797 F.Supp. 1528 (N.D. Cal. 1992) attempt to mitigate *Hydrostorage* by allowing State regulation of apprenticeship to the limited extent necessary to implement the Fitzgerald Act's minimum requirements. But these cases would still prohibit States from regulating apprenticeship in ways permitted, if not required, by the Fitzgerald Act. And, this prohibition is inconsistent with the intent of ERISA and of this clarifying legislation. The Fitzgerald Act itself, and the Labor Department's implementing regulations, contemplato that approved State bodies will impose regulations beyond the minimums required by the Act.

generally, and in particular, to restore the States' right and power to include standards regarding the training and employment of apprentices in public works contracts.

State Mechanics' Liens and Other Collection Laws

All fifty States have mechanics' lien laws, many of which date back to the 19th century. They are a traditional means by which workers secure payment of wages and benefits for work they perform in erecting or repairing a building or other property. These laws typically grant to persons who bestow work or services on property (e.g., laborers, engineers, contractors, architects) a lien on the property to secure payment for their work or services.

Mechanics' lien laws are an essential tool used by joint labor-management, multiemployer pension, health and welfare plans in the building and construction industry to collect delinquent, collectively-bargained employer contributions. This industry is characterized by thousands of relatively small, mobile employers who work on short-term projects and who can easily go out of business or simply disappear, leaving no significant assets upon which to enforce a direct judgment for delinquent contributions. But for a lien on the improved property granted by State law, workers and their benefit plans would often remain unpaid by employers, a fate long ago rejected by public policy in all 50 States.

However, some Federal and State courts have ruled that ERISA's general preemption rule bars workers' pension, health and welfare plans from use of State mechanics' lien laws and other State law tools for collecting delinquent contributions, even though such State laws remain available to engineers, contractors, architects, etc. to collect payment for their services on a project. In effect, workers' plans have been treated as "second-class citizens."

For example, in *Iron Workers Mid-South Pension Fund v. Terotechnology Corp.*,[16] the U.S. Court of Appeals for the Fifth Circuit held that ERISA preempts the Louisiana Private Works Act to the extent that it provides workers with a property lien securing contributions to their pension plans for work performed on the property. Similarly, in *Carpenters Southern California Administrative Corp. v. El Capitan Development Co.*,[17] the California Supreme Court concluded that ERISA preempts that State's mechanics' lien law so as to block employee benefit plans from access to this traditional means for collecting contributions for workers. A divided panel of the U.S. Court of Appeals for the Ninth Circuit reached the same conclusion of ERISA preemption with regard to the same California mechanics' lien statute in *Sturgis v. Herman Miller, Inc.*[18] However, the unfairness and illogic of this conclusion was identified by the dissenting judge:

> Employee benefits (which may include pension, health, welfare, and vacation benefits) are an important part of an employee's compensation. The result of the majority's opin-

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[16] 891 F.2d (5th Cir.), *cert. den.*, 497 U.S. 1024, 110 S.Ct. 3272 (1990).

[17] 53 Cal.3d 1041, 282 Cal. Rptr. 277, 811 P.2d 296 (1991), *cert. den.*, U.S. , 112 S.Ct. 430 (1991).

[18] 943 F.2d 1127 (9th Cir. 1991). Another decision holding State mechanics lien laws preempted is *McCoy v. Massachusetts Institute of Technology*, 950 F.2d 13 (1st Cir. 1991) (Massachusetts' lien law).

> ion is that employees who are not members of ERISA plans may use mechanics' liens to ensure that employers fulfill their obligations to pay benefits—but members of ERISA plans may not.[19]
>
> Some other courts have agreed with the spirit of this dissent and found that State mechanics lien laws are not preempted by ERISA.[20]

Other means for securing the payment of earned wages and benefit contributions are provided under the laws of several States, including liens, payment and licensing bonds, stop notice procedures, and contractor payment guaranty statutes. Like mechanics' liens, these other means for securing and collecting delinquent benefit contributions have been jeopardized by misapplications of ERISA preemption.[21]

The devastating real world impact of these court rulings on workers and their pension and health plans was brought home through the testimony of various witnesses before the committee. Douglas J. McCarron, President of the Southern California Conference of Carpenters told the Subcommittee on Labor-Management Relations at its hearing on March 24, 1993, that the El Capitan decision, preempting California's mechanics lien law, itself caused the workers to lose about $120,000 in benefit plan contributions. More than 150 other collection cases had to be compromised or dismissed outright by the plans involved.

In the case of one particular contractor owing about $84,000 in benefit plan contributions, the plans' inability to record mechanics' liens or assert bending claims because of ERISA preemption has left them with no effective remedy. In 1982, 66 percent of the plans' contribution collections came through mechanics' liens, surety bonds, and stop-notices. In contrast, by 1992, these collection procedures had been so undermined by ERISA preemption rulings, that only 5 percent of the plans' collections could be made through these procedures.

There is no indication that Congress intended ERISA to deny employee benefit plans and participants access to State law remedies and other means for collecting employer contributions, such as lien laws. To the contrary, Congress has expressly declared the effective collection of employer contributions by multiemployer plans to be an important policy concern of ERISA. For example, Congress' considerations in adopting the 1980 multiemployer pension plan amendments to ERISA included the following:

> Delinquencies of employers in making required contributions are a serious problem for most multiemployer plans. Failure of employers to make promised contributions in a timely fasion imposes a variety of costs on plans. While contributions remain unpaid, the plan loses the benefit of

[19] 943 F.2d at 1131 (Pregerson, J. dissenting).

[20] *See, e.g., Plumbers Local 458 Holiday Vacation Fund v. Immel*, 151 Wis.2d 233, 445 N.W.2d 43 (Wis. App. 1989).

[21] *See, e.g., Bricklayers Local 33 Benefit Funds v. America's Marble Source, Inc.*, 950 F.2d 114 (3rd Cir. 1991); *Carpenters Health & Welfare Fund v. Developers Co.*, 11 Cal. App. 4th 1539 (Ct. App. 1992); *Carpenters Health & Welfare Trust v. Surety Co., of the Pacific*, 13 Cal. App. 4th 1406, 18 Cal. Rptr. 2d 661 (Ct. App. 1993); *Carpenters Health & Welfare Fund v. Pacific Indemnity Co.*, No. 706344 (Santa Clara Cty. Sup. Ct. July 24, 1992).

> investment income that could have been earned if the past due amounts had been received and invested on time. Moreover, additional administrative costs are incurred in detecting and collecting delinquencies. Attorneys fees and other legal costs arise in connection with collection efforts.
>
> These costs detract from the ability of plans to formulate or meet funding standards and adversely affect the financial health of plans. Participants and beneficiaries of plans as well as employers who honor their obligation to contribute in a timely fashion bear the heavy cost of delinquencies in the form of lower benefits and higher contributions rates. Moreover, in the context of this legislation, uncollected delinquencies can add to the unfunded liability of the plan and thereby increase the potential withdrawal liability for all employers.
>
> Recourse available under current law for collecting delinquent contributions is insufficient. . . .[22]

The 1980 amendments did "not change any other type of remedy permitted under State or Federal law with respect to delinquent multiemployer plan contributions."[23]

More generally, it has long been a rule of Federal law that State law enforcement mechanisms can be used to enforce Federal court judgments.[24] As observed by the U.S. Supreme Court, "Federal Rule of Civil Procedure 69(a) . . . defers to State law to provide methods for collecting judgments. . . . Consequently, State-law methods for collecting money judgments, must, as a general matter, remain undisturbed by ERISA. . . ."[25]

In short, ERISA's policy is to promote, not inhibit, the effective collection of employer contributions by multiemployer pension and health and welfare, benefit plans. This policy demands that ERISA not be read to impede plans' access to State lien laws and other remedies or means for collection made available by the States. Legislation is needed to clarify ERISA's preemption provisions so as to remove any doubt that multiemployer plans have full access to such State laws.

State associations' support

The purposes of H.R. 1036 have received enthusiastic support from key associations of State government officials. The National Association of Attorneys General, at its Summer 1991 meeting, adopted a Resolution urging enactment of the Senate version of the bill to "curtail ERISA preemption attacks on State laws governing . . . prevailing wages [and] apprenticeship standards . . . ". A similar resolution endorsing H.R. 1036 was adopted by that organization at its Summer 1993 meeting.

The National Association of Government Labor Officials, in July 1991, adopted a Resolution urging enactment of H.R. 2782 (predecessor legislation to H.R. 1036), noting that in the "critical area of

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[22] 126 Cong. Rec. 23039, 23288 (1980) (remarks of Rep. Thompson and of Sen. Williams, respectively); Senate Labor Committee summary and analysis of consideration of S. 1076, 96th Cong., 2d Sess. (April 1980).

[23] H.Rept. No. 96–869 (Part II), 96th Cong., 2d Sess. 48–49 (1980).

[24] *See* Rule 69(a) of the Federal Rules of Civil Procedure, 28 U.S.C. Civil Rule 69(a).

[25] *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 834 (1988).

State prevailing wage laws, recent judicial decisions have struck devastating blows to our ability to protect workers from unscrupulous construction employers and to protect honest contractors in the competitive bidding process required for the awarding of public work contracts." A similar resolution has been adopted by the Interstate Labor Standards Association.

EXPLANATION OF THE BILL

H.R. 1036 would amend ERISA by creating a ninth category of exceptions to ERISA's general rule preempting all State laws relating to ERISA-covered employee benefit plans. This new category of State laws preserved from Federal preemption would consist of:

(1) any provision of State law to the extent that such provision requires the payment of prevailing wages (including employee benefits or "fringe" benefits) on publics and permits any prevailing employee benefit plan contribution of cost requirement of such law to be met by crediting—

(i) the payment of employee benefit plan contributions or costs,

(ii) the payment of wages in lieu of such contributions or costs, or

(iii) the payment of a combination of wages and such contributions or costs;

except that this subparagraph of ERISA shall not be constructed to exempt from subsection 502(a) of ERISA any provision of State law to the extent to otherwise mandates the maintenance of, or otherwise regulates the benefits or operations of, any employee benefit plan;

(2) any provision of State law to the extent the provision establishes minimum standards for the certification or regulation of apprenticeship or other training programs, concerns the establishment, maintenance or operation of a certified or registered apprenticeship or other training program, or makes certified or registered apprenticeship or other training an occupational qualification; and does not conflict with any right, requirement, or duty established under ERISA; and

(3) Any provision of State law to the extent the provision provides for a mechanics' lien or other lien, bonding, or other security for the collection of delinquent contributions to a multiemployer pension, health or welfare plan.

The bill is intended to overturn the aforementioned *General Electric, Hydrostorage, McDonald* and *Terotechnology* line of court decisions, and all similar decisions, to the extent that they held the State laws at issue, or their application, preempted by ERISA. The bill would be effective as of the date of enactment, and would apply to actions pending on or after that date.

The committee believes that the enactment of H.R. 1036 would bring ERISA's statutory language more clearly in line with the Act's original intent and the intent of the 1980 amendments. The bill does not represent a shift away from the concept of a single Federal regulatory scheme for employee benefit plans envisioned by ERISA.

Rather, the committee has concluded that Congress did not intend ERISA to deprive State and local governments of their tradi-

tional right and power to regulate wages or to set the terms and conditions under which they contract for the construction of public buildings and works or services funded or financed, in whole or in part, by State or local governments. Congress did not intend ERISA to upset the longstanding State role in apprenticeship, especially the States' role in the national apprenticeship system established by the Fitzgerald Act. And, Congress did not intend ERISA to block multi-employer pension, health and welfare plans from use of State law liens and other State law means for collecting delinquent contributions.

More importantly, however, the committee is convinced that the fundamental protective policies underlying ERISA would be advanced by preservation of these State laws without detracting from the concept of a Federal regulatory scheme for employee benefit plans.

With respect to State prevailing wage laws, the committee agrees with the views expressed by Judge Pratt in dissenting from the General Electric decision, about the incidental impact of those laws on employee benefit plans. State prevailing wage laws do not mandate benefits or regulate benefit plans. These laws merely consider the cost or value of prevailing employee benefits in determining the prevailing wage that a contractor or subcontractor must pay to its workers on the public works project and credit such contributions or costs for bona fide plans towards the contractor's prevailing wage obligations. They do not relate to persons other than the workers on the public works projects.

However, some Republican members of the committee expressed concern that a general exemption for "any State law providing for the payment of prevailing wages" (the language found in the committee-approved bill in the 102d Congress, H.R. 2782), might be misconstrued as allowing States to mandate employers to create employee benefit plans or to provide particular types of employee benefits, or to regulate the operations of bona fide employee benefit plans, in contrast to the incidental effects on plans cited by Judge Pratt. The Henry-Berman floor amendments to H.R. 2782 addressed these concerns, enabling the House to pass the bill by voice vote.

H.R. 1036, as amended, incorporates the Henry-Berman amendments with two additional clarifications.

First, the bill conditions the exemption of the State law allowing an employer to meet the prevailing employee benefit plan contribution or cost requirement in any of three ways: (1) by paying cash wages in lieu of such contributions or costs; (2) by paying contributions to or costs for employee benefit plans; or (3) by paying any combination of wages and such contributions or costs.

Second, the bill's exception clause provides that this exemption from preemption shall not be construed as allowing a State prevailing wage law to otherwise mandate the maintenance of, or otherwise regulate the benefits or operations of, any employee benefit plan. This exception clause is not to be construed as inferring that prevailing wage laws do mandate or regulate benefit plans, contrary to Judge Pratt's dissent in the *General Electric* decision. Nor should this clause be construed as preventing States from continuing to require that the contributions made or costs incurred be for

bona fide employee benefit plans so as to preclude the diversion of public and worker moneys to sham programs.

A further response to the concerns of some of the Republican members of the committee, reflected in the Henry-Berman amendments and in H.R. 1036 itself, is the limitation of the exemption to public prevailing wage laws.

The committee intends that State prevailing wage laws which apply to private projects *and* which mandate or regulate the payment of benefit contributions would continue to be preempted by ERISA. However, since ERISA is not intended to preempt State laws which regulate wages but which do not mandate benefit payments or otherwise regulate benefit contributions, the bill would not permit ERISA preemption of those laws.

Yet another response to the Republican concerns which was addressed in H.R. 1036 is the provision that no State apprenticeship standard shall conflict with "any right, requirement, or duty established under" ERISA. This is the language offered by the ranking minority member of the Subcommittee on Labor-Management Relations, Representative Marge Roukema, and accepted during House consideration of H.R. 2782 by the bill's manager, subcommittee Chairman Pat Williams.

The removal of ERISA preemption as an impediment to State apprenticeship standards in no way precludes Congress from enacting new national apprenticeship standards in the future.

As a final response to minority concerns, the bill incorporates the Henry-Berman amendments with respect to the contribution collection provisions by more definitely stating the types of collection remedies and means being preserved.

The committee believes that, on balance, H.R. 1036 as reported, fairly accommodates the interests of the States, of workers, and of employers, as well as of the Federal Government. It deserves both the bipartisan support it enjoyed in the committee as well as the prompt passage by the whole House given to its predecessor, H.R. 2782.

Congressional Budget Office Estimate

In compliance with clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974, submitted prior to filing of this report, is set forth as follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 15, 1993.

Hon. William D. Ford,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 1306 as ordered reported by the House Committee on Education and Labor on June 23, 1993. Enactment of H.R. 1036 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to this bill.

The Employee Retirement Income Security Act of 1974 (ERISA) governs employee welfare benefit plans and prescribes the standards they must meet. Also, the law preempts any state law that relates to employee welfare benefit plans covered by ERISA. Under H.R. 1036, certain state laws would prevail over ERISA. The bill states that the amendments made by H.R. 1036 would apply to actions taken on or after the date of enactment. This bill is in response to questions that have arisen in a number of federal courts regarding the relationship of ERISA to state law.

The bill could increase federal costs for federally-assisted construction projects where a state law requires higher compensation for workers than a federal law. Consequently, the exemption from ERISA would raise labor costs for some projects in these states, and increase the federal government's cost where it provided the states with matching funds—for, example, highway construction. No estimate of these potential costs is possible, however, because of the limited information on state wage agreements and their relationship to government contracts.

In addition, there could be some additional state and local costs on state-funded projects because of the bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Wayne Boyington.

Sincerely,

ROBERT D. REISCHAUER, *Director*.

COMMITTEE ESTIMATE

With reference to the statement required by clause 7(a)(1) of Rule XIII of the Rules of the House of Representatives, the committee accepts the estimate prepared by the Congressional Budget office with respect to H.R. 1036.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the committee estimates that the enactment of H.R. 1036 will have no inflationary impact on prices and costs in the operation of the national economy. It is the judgment of the committee that the inflationary impact of this legislation as a component of the Federal budget is negligible.

OVERSIGHT FINDINGS OF THE COMMITTEE

With reference to clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the committee's oversight findings are set forth in the Background and Need for the Legislation section of this report.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

In compliance with clause 2(1)(3)(D) of Rule XI of the Rules of the House of Representatives, no findings or recommendations by the Committee on Government Operations were submitted to the committee with reference to the subject matter specifically addressed in H.R. 1036.

Section Analysis

Section 1—ERISA Preemption Rules Not To Apply To Certain Additional State Laws.

This section would amend section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) to add at the end thereof a paragraph (9) describing a ninth category of State laws exempted from the general Federal preemption provisions of section 514(a). This category consists of the following types of State laws:

(1) any provision of State law to the extent it provides for the payment of prevailing wages (including employee benefits or "fringe" benefits) on public projects providing that the laws meet certain specified conditions;

(2) any provision of State law to the extent it establishes minimum standards for the certification or regulation of apprenticeship or other training programs, concerns the establishment, maintenance or operation of a certified or registered apprenticeship or other training program, or makes certified or registered apprenticeship or other training an occupational qualification; and does not conflict with any right, requirement, or duty established under ERISA; and

(3) any provision of State law to the extent it provides for a mechanics' lien or other lien, bonding, or other security for the collection of delinquent contributions to a multiemployer pension, health or welfare plan.

Section 2—Effective Date.

Section 2 provides that the amendments made by section 1 shall apply to actions pending on or after the date of enactment of the bill.

CHANGES IN THE EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 514 OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

EFFECT ON OTHER LAWS

SEC. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under 4(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

* * * * * * *

(9) Subsection (a) shall not apply to—

(A) any provision of State law to the extent that such provision requires the payment of prevailing wages, including employee benefits, on public projects and permits any prevailing employee benefit plan contribution or cost requirement of such law to be met by crediting—

(i) the payment of employee benefit plan contributions or costs,

(ii) the payment of wages in lieu of such contributions or costs, or

(iii) the payment of a combination of wages and such contributions or costs;

except that this subparagraph shall not be construed to exempt from subsection (a) any such provision to the extent it otherwise mandates the maintenance of, or otherwise regulates the benefits or operations of, any employee benefit plan;

(B) any provision of State law to the extent that such provision—

(i) establishes minimum standards for the certification or registration of apprenticeship or other training programs,

(ii) concerns the establishment, maintenance, or operation of a certified or registered apprenticeship or other program, or

(iii) makes certified or registered apprenticeship or other training an occupational qualification,

and does not conflict with any right, requirement, or duty established under this title; or

(C) any provision of State law to the extent that such provision provides for a mechanics' lien or other lien, bonding, or other security for the collection of delinquent contributions to a multiemployer plan.

* * * * * * *

MINORITY VIEWS

We continue to object to various provisions of H.R. 1036 as described below.

I. H.R. 1036 SEVERELY WEAKENS THE CORNERSTONE OF ERISA

As the United States Supreme Court has recognized time and again, the purpose of the broad nature of ERISA preemption is to allow employees and employers through negotiation, or otherwise, to adopt uniform plans for coordinating complex administrative and substantive activities, unaffected by conflicting regulatory requirements in differing states (e.g. see *Fort Halifax Packing Co.* v. *Coyne*, 482 U.S. 1. (1987)).

The original authors of this landmark legislation, including Representative John Dent who served as the floor manager for ERISA from this Committee, stated the case for the broadest possible preemption of state laws as follows—

> "Finally, I wish to make note of what is to many of crowning achievement of this legislation, the reservation to Federal authority [of] the *sole power* to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation." (emphasis added)

However, it is this very "conflicting and inconsistent" state and local regulation which the provisions of H.R. 1036 would allow to be imposed on ERISA plans.

Proponents of the bill argue that it was not the original intent of ERISA to preempt state laws in connection with apprenticeship and prevailing wage programs or collection remedies for multiemployer plans. Therefore, they say the courts misapplied the ERISA preemption doctrine in the *Hydrostorage, General Electric, Iron Workers*, and similar cases.

To the contrary, in most instances, such laws not only "relate to" employee benefit plans as specified under ERISA section 514(a), but actually regulate the activities of such plans. The consistency with which the courts have held that certain portions of such laws "relate to" employee benefit plans provides an unequivocal statement that these cases do not deviate from the original congressional intent.

Also, unlike other narrower exceptions to ERISA preemption, which the Congress, after extensive deliberation, has explicitly provided for in the past, certain provisions of H.R. 1036 create an expansive loophole for state regulation of ERISA employee benefit plans. For example, a 1984 exception to ERISA preemption for state domestic relations laws was conditioned to make certain uniform federal qualification standards applicable in connection with

any qualified domestic relations orders which a state court may serve on an ERISA plan. In contrast, as described in more detail below, H.R. 1036 exempts "any provision of state law" generally relating to ERISA apprenticeship and training programs, thus opening the floodgates for a multiplicity of overlapping, conflicting state employee benefit plan regulation.

This shredding of the uniformity and predictability of ERISA regulation will severely impair the ERISA preemption cornerstone which has served our Nation well for nearly 18 years. With America's workers and employers facing the competitive pressures of the global economy, now is not the time to discourage the establishment and maintenance of apprenticeship and training programs.

II. STATE PREVAILING WAGE LAWS WITHOUT BENEFIT MANDATES NOT AT RISK OF PREEMPTION

The assertion by proponents of the bill that the 1989 Second Circuit Court of Appeals Case, *General Electric* v. *New York State Department of Labor*, jeopardizes traditional state prevailing wage laws is misleading. In fact, in nearly 18 years of ERISA's existence, the sole challenge to arise to a state-wide prevailing wage statute has been to the New York law in the *General Electric* case.

Further, the successful challenge, on the basis of ERISA preemption, was only to that *portion* (the "supplements" portion) of the New York statute which required specifically identified health, welfare, disability, retirement, and other ERISA benefits to be paid in cash or benefit form at prevailing rates. Importantly, the statute also precluded employers from substituting one form of supplement (e.g. ERISA benefits or costs thereof) for another. As a result, the court held that for "ex-locality employers" ERISA preempts this form of a "supplements" statute because it regulates, directly or indirectly, the terms and conditions of employee benefit plans so as to prescribe the type and amount of an employer's contribution to a plan, prescribe the nature and amount of the benefits provided, and prescribe the rules and regulations under which the plan operates.

This type of ERISA plan benefit or contribution mandate goes to the heart of ERISA preemption. The court observed that the G.E.—Local 3 I.B.E.W. bargaining agreement was designed to be applied uniformly to all employers in the bargaining unit regardless of their working location. In fact the benefits were part of a national benefit plan covering nearly all of the employees of the General Electric Company. It concluded that this was what Congress hoped to accomplish when ERISA was enacted, but that the supplements rule puts such employers at a financial disadvantage. This was found to be the case because the New York supplements rule burdens the ERISA plans in which these employees participate by denying their employers credit for non-prevailing ERISA pension and welfare benefits while requiring the employers to incur the additional costs of prevailing benefits. The result is an elimination of the cost savings achieved through uniform plan administration. The purpose of ERISA preemption is to provide the freedom to negotiate and to facilitate such savings in order to promote the extension of employee benefits.

An alternative to the intrusive New York "supplements" law exists in other states which set total prevailing wage levels so as to include the cost of prevailing ERISA benefits, but in a "benefit neutral" fashion as is the case under the federal Davis Bacon Act. In other words, a prevailing wage and benefits cost of $X can be met by $X of cash *or* ERISA benefits costs which may be substituted for cash. Under these laws, an employer is not required to establish a plan or to provide specific benefits or their costs, but is allowed credit in meeting the prevailing wage for the cost of any ERISA benefits already provided.

No court has preempted such "benefit neutral" statutes, and the *General Electric* decision does not address these situations. After 17 years of ERISA it is highly unlikely that any challenge will be made to such a statute. Even without the benefit of the changes made under H.R. 1036, if challenged under current law, the effects of such laws will undoubtedly be held to be "incidental" in accordance with established case law, and thus unaffected by ERISA preemption.

Of course, the exception to ERISA preemption relating to state prevailing wage laws will help to ensure that this latter result will be obtained. In particular, the proposed ERISA section 514(b)(9)(A) relating to the exception to ERISA preemption for certain prevailing wage laws reads, in part, that the state law exempted must permit "any prevailing employee benefit plan contribution or cost requirement of such law be met by crediting (1) the payment of wages in lieu of such contributions or costs, (2) the payment of employee benefit plan contributions or costs, or (3) a combination of wages and such contributions or costs:". In a colloquy during committee markup the Chairman and Ranking Member of the subcommittee on Labor-Management Relations affirmed that it is "the intent of the committee that his section require that a state prevailing wage law, to be exempted from ERISA preemption, be structured so as to allow the crediting or substitution of the contributions or costs of any ERISA pension or welfare benefit plan against the 'prevailing employee benefit plan contribution or cost requirement of such law', regardless of whether such ERISA benefits are considered to be "prevailing" under the state law."

Secondly, it can be generally stated that Section 514(b)(9)(A) of the bill, as amended, provides for an exception to ERISA preemption for state prevailing wage laws which permit the crediting or substitution of any combination of wages or ERISA employee benefit plan contributions or costs in satisfaction of the "prevailing employee benefit plan contribution or cost requirement of such law". By means of a colloquy as above, it was affirmed that "by limiting this exception to the so-called 'prevailing employee benefit plan contribution or cost requirement of such law', it is the committee's intent that there be no inference as to the effect of ERISA preemption on other portions of state prevailing wage laws to the extent that they permit the crediting or substitution of ERISA employee benefit plan contributions or costs in satisfaction of the cash wage portion of such laws."

Only public projects affected

Unlike the bill, H.R. 2782, reported by the Committee last year, H.R. 1036 limits the exemption relating to state prevailing wage laws to "public projects." The lack of restriction on the "any law" language in last year's bill, however, would have permitted state laws to regulate ERISA employee benefit plans in the context of private contracts or employment as well as state and local public works. In fact, that bill would also have overturned several other court decisions which found local resolutions and ordinances to regulate ERISA plans in connection with *private* construction projects. Although the scope of this year's version is limited to public projects, it is instructive to recount the court's findings in several of the decisions that now will continue to be upheld.

In the case of *Associated Builders and Contractors* v. *Baca*, 769 F. Supp. 1537 (N.D. Cal. 1991) and *Chamber of Commerce of the United States* v. *Bragdon* the United States District Court for the Northern District of California held as follows in connection with resolutions passed by the cities of San Bruno and South San Francisco and an ordinance passed by Contra Costa County—

> The effect of the resolutions and the ordinance is to discourage employers from paying benefits at a level other than that established as "prevailing." Not only does this directly implicate Congress' desire to avoid a patchwork of state regulation, it also imposes differing requirements on employers within a single state or even a single locality. Employers will be faced with the choice of: (1) setting up separate benefit plans for employees on covered projects; (2) adjusting participation in existing plans to compliance levels; or (3) abandoning ERISA benefit plan benefits altogether.
>
> Each of these alternatives represents regulation of ERISA plans in a manner that may harm employees and create inefficiencies in the implementation of ERISA plans on a national, state and even a local level. They illustrate the extent to which the resolutions and ordinance "relate to" and "purport to regulate" ERISA benefit plans. The inconsistencies and burdens created by this local legislation is within the preemptive intent of Congress to assure that ERISA plans are governed by a single set of federal regulations. The resolutions and ordinance undermine this goal and are therefore preempted.

ERISA plan regulation not incidental

As illustrated by the above opinion, as well as *General Electric*, the courts found the offending state and local laws to *regulate* ERISA employee benefit plans in a major way, and not in merely an incidental fashion.

It should be noted, however, that the courts *did not preempt "prevailing wages" per se*, but only the *portion* under which the state or locality misused their laws to regulate ERISA employee benefit plans.

III. BILL JETTISONS NATIONAL APPRENTICESHIP PLANS AND STIFLES EXPANSION

Loophole for State mandated plans and benefits

The bill's exception to ERISA preemption for apprenticeship programs goes beyond that needed to merely reverse the *Hydrostorage* and other court decisions referred to in the majority report. Since "apprenticeship or other training programs" are specifically defined as "employee welfare benefit plans" under ERISA section 3(1)(A), the Courts have determined in these decisions that ERISA preempts the several state laws, rules, regulations, and administrative orders involved.

Going beyond these decisions, however, the bill exempts "any provision of state law" which "establishes minimum standards for" or which "concerns the establishment, maintenance, or operation of a certified or registered apprenticeship or other training program". State laws making such programs an "occupational qualification" requirement are also exempted.

Given the cases involved, the clear intent of this provision is to permit states to require *any* employer to participate in or contribute to *any* particular ERISA apprenticeship or training program under such state laws, rules, or regulations, even if such provisions exceed the boundaries of the federal National Apprenticeship Act (the so-called Fitzgerald Act).

These benefit mandates will impose additional costs on such plans and limit the flexibility of employers in selecting alternate means of assuring a trained work force. Moreover, inconsistent state apprenticeship and training requirements will penalize employers who operate in multiple jurisdictions.

ERISA fiduciary standards maintained

Unlike its predecessor, H.R. 2782, the bill conditions the state law exemption in such a manner that it may not conflict with any right, requirement, or duty established under Title I of ERISA. Therefore, state laws could not take precedence over the ERISA fiduciary standards requiring the prudent investment of trust funds and the operation of apprenticeship and training plans for the exclusive benefit of participants and beneficiaries.

Bill not limited to public works or construction

By going beyond the *Hydrostorage* decision, the bill would allow states to regulate not only apprenticeship and training programs connected with state public works projects, but also *any* training program of *any* employer. While such state laws are now typically limited to construction-related occupations, the broad language of the bill leaves an open invitation for states to extend their jurisdiction to occupations under other single and multiple employer plans, whether union or non-union.

If the intent of the bill were merely to overturn the *Hydrostorage* decision, then its scope would be limited to programs relating to public works projects. In *Hydrostorage,* California had adopted state apprenticeship standards which required construction employers on publicly funded work to participate in and contribute to a particular union apprenticeship program, and the state further

established the manner in which such participation and funding would take place. The California law required Hydrostorage to apply to a union apprenticeship committee for permission to train apprentices and to sign an agreement to train its apprentices solely in accordance with the union apprenticeship program. The Court of Appeals acted to invalidate the enforcement of these provisions of state law because it required construction contractors on public works projects to become bound by a specific apprenticeship plan. The state law went beyond the traditional realm of setting minimum state apprenticeship standards by requiring direct contractor participation in and contribution to specific apprenticeship plans.

Bill will limit employer training programs

Even as the law currently exists in some states, the bill will limit the ability of employers to establish their own training programs (e.g. the effect of the California law is to prevent the establishment of ERISA apprenticeship plans in areas in which a "parallel" program exists). If H.R. 1036 is enacted, it will give other states carte blanche as well to ignore the ERISA statute and redefine their own approval criteria, however restrictive. Discriminatory restrictions adverse to either union or non-union plans could operate unchecked. Thus, innovation could be stifled and the costs of establishing training programs increased, thereby reducing the number of employers willing to offer training and apprenticeship programs. It is indeed ironic that this bill will allow legal barriers to be erected which are in directed conflict with the expressed goals of the Administration to improve the skill levels of the entire workforce and to increase apprenticeship and training opportunities, especially for minorities, women, and youth.

Federal Davis-Bacon programs affected

In the report "Workforce 2000," the federal government predicts the loss of American jobs to foreign workers caused by a critical shortage of trained and skilled U.S. craftworkers. To remedy the situation, the U.S. Department of Labor has turned to the proven method of apprenticeship training to increase the skill level of America's workers. Attempting to encourage more training by the private sector, the federal Bureau of Apprenticeship Training (BAT) will approve apprenticeship programs even if a state program will not, if the federal BAT feels that the state's disapproval is unjustified. Thus the very ERISA apprenticeship and training programs used by employers to maintain their qualification under federal Davis-Bacon projects could be disallowed for any other training purposes under more restrictive state laws.

IV. BILL OVERTURNS UNIFORM COLLECTION REMEDIES

Under the bill as reported, the mechanics' liens and other remedies imposed under the exempted laws may vary from state to state, thereby exposing employers who contribute to regional or national plans to varying remedies.

In contrast, ERISA currently allows multiemployer plans to collect unpaid contributions (including interest), reasonable attorney's fees and costs, and, if liquidated damages are not provided for under the plan, an amount equal to interest on the unpaid con-

tributions. Application of liquidated damages is allowed in an amount up to 20 percent of unpaid contributions, or higher, if permitted by the plan and applicable state laws.

These civil remedies are substantially stronger than those applicable in most other ERISA enforcement areas. We agree that it is important for multiemployer plans to have effective collection remedies. Not only does the inability to secure payment from delinquent employers leave a potential for undermining the financial soundness of such plans, but it also adversely affects other contributing employers who may have to make up the shortfall.

However, there does not appear to be substantial evidence that the current ERISA remedies are inadequate. For example, state mechanics' lien laws or other collection remedies are not preempted by ERISA where they are of general applicability (e.g. in *Plumber's Local 458* v. *Immel,* 151 Wis.2d 233,445 N.W.2d 43 (Ct. App. Wisc. 1989) the Wisconsin Court of Appeals found that ERISA does not preempt general state enforcement mechanisms). If such remedies can be shown to be inadequate, a better solution would be to strengthen the remedies under ERISA in a uniform fashion, rather than by undercutting the preemption provision.

CONCLUSION

As discussed, the provisions of H.R. 1036 reported by the Committee are not limited to overturning a few court decisions which upheld ERISA's preemption of intrusive and inconsistent state laws regulating employee benefit plans.

Although narrowed in some areas, in its present form, H.R. 1036 will extend broad powers to the states to negate the uniform regulation of employee apprenticeship and training program plans under ERISA. We therefore must continue to oppose the bill in its present form.

BILL GOODLING.
MARGE ROUKEMA.
RICKARD K. ARMEY.
HARRIS W. FAWELL.
CASS BALLENGER.
BILL BARRETT.
JOHN A. BOEHNER.
RANDY "DUKE" CUNNINGHAM.
PETER HOEKSTRA.
HOWARD P. "BUCK" MCKEON.
DAN MILLER.

○

Calendar No. 143

103D CONGRESS *1st Session*	HOUSE OF REPRESENTATIVES	REPORT 103–254

DEPARTMENT OF DEFENSE APPROPRIATIONS BILL, 1994

REPORT

OF THE

COMMITTEE ON APPROPRIATIONS

[To accompany H.R. 3116]

SEPTEMBER 22, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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103D CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 103-254

DEPARTMENT OF DEFENSE APPROPRIATIONS BILL, 1994

SEPTEMBER 22, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MURTHA, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.R. 3116]

The Committee on Appropriations submits the following report in explanation of the accompanying bill making appropriations for the Department of Defense, and for other purposes, for the fiscal year ending September 30, 1994.

APPROPRIATIONS AND BUDGET ESTIMATES

Appropriations for most military functions of the Department of Defense are provided for in the accompanying bill for the fiscal year 1994. This bill does not provide appropriations for military construction, military family housing, civil defense, or nuclear warheads, for which requirements are considered in connection with other appropriations bills.

The new budget (obligational) authority enacted for the fiscal year 1993, the President's budget estimates, and amounts recommended by the Committee for the fiscal year 1994 appear in summary form in the following table:

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1993 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1994

Agency and item (1)	Appropriated, 1993 (enacted to date) (2)	Budget estimates, 1994 (3)	Recommended in bill (4)	Bill compared with appropriated, 1993 (5)	Bill compared with budget estimates, 1994 (6)
RECAPITULATION					
Title I - Military Personnel	76,275,025,000	70,083,770,000	71,277,520,000	-4,997,505,000	+1,193,750,000
Title II - Operation and Maintenance	69,405,963,000	74,239,308,000	73,771,103,000	+4,365,140,000	-468,205,000
Title III - Procurement	55,375,931,000	45,067,328,000	45,654,493,000	-9,721,438,000	+587,165,000
Title IV - Research, Development, Test and Evaluation	38,234,848,000	38,620,327,000	36,546,014,000	-1,688,834,000	-2,074,313,000
Title V - Revolving and Management Funds	1,737,200,000	1,451,895,000	1,581,900,000	-155,300,000	+130,005,000
Title VI - Other Department of Defense Programs	11,027,823,000	11,082,748,000	10,969,594,000	-58,229,000	-113,154,000
Title VII - Related agencies	246,600,000	312,088,000	146,988,000	-99,612,000	-165,100,000
Title VIII - Economic Conversion	472,000,000			-472,000,000	
General provisions	380,925,000		21,700,000	-359,225,000	+21,700,000
(Additional transfer authority)	(1,500,000,000)	(2,000,000,000)	(2,000,000,000)	(+500,000,000)	
Total, Department of Defense	253,156,315,000	240,857,464,000	239,969,312,000	-13,187,003,000	-888,152,000
Scorekeeping adjustments	956,424,000	224,067,000	175,227,000	-781,197,000	-48,840,000
Grand total	254,112,739,000	241,081,531,000	240,144,539,000	-13,968,200,000	-936,992,000

Summary of Committee Recommendations

The budget estimates for fiscal year 1994 for activities of the Department of Defense and related agencies total $241,081,531,000. The amounts recommended by the Committee in the accompanying bill total $240,144,539,000 in new budget (obligational) authority. The new budget (obligational) authority recommended is $936,992,000 below the budget estimates and is $13,968,200,000 below the sums made available for the same purposes for fiscal year 1993. These figures do not include funding for Military Construction and the nuclear weapons program for the Department of Energy. These programs are funded in separate legislation.

The Committee has made every effort to avoid reductions in the nation's defense readiness while recognizing the need to reduce the federal expenditures in all areas in order to reduce the large deficits facing the federal government.

COMMITTEE BUDGET REVIEW PROCESS

During the regular review of the fiscal year 1994 budget, the Subcommittee on Defense held hearings during the time period of March 17, 1993 to May 19, 1993. Testimony received by the Subcommittee totalled approximately 1,900 pages of transcript.

Of the total, some 300 pages will not be printed due to the security classification of the material discussed. Almost 30 percent of the hearings were held in open session. Executive or closed sessions were held only when the security classification of the material to be discussed presented no alternative.

DEFENSE BUDGETS IN THE POST COLD-WAR ERA

Throughout the Cold War, the Committee and the Congress steadfastly supported a strong U.S. military defense posture. That strong defense posture has been a large factor in the dramatic geopolitical events of the past five years including:

—The tearing down of the Berlin Wall;
—The demise of the Warsaw Pact;
—The dissolution of the former Soviet Union; and
—The emergence of democratic forces in Eastern Europe and the former Soviet Union.

In light of these geopolitical events, the Committee supports the downsizing of the force structure and the need to reduce spending for defense. However, the Committee notes the scope of the reductions in defense that have already occurred in recent years and the projections for the outyears is extremely large. For example:

(1) The fiscal year 1994 budget represents the ninth consecutive year of reductions in budget authority for defense when measured in constant dollars.[1]

(2) By the end of fiscal year 1994, the active force level will be 513,000 below the level in place when the Berlin Wall came down in 1989. This number is higher than all the forces we had stationed overseas in 1989 and equal to the entire force we deployed to the Persian Gulf during the war with Iraq in 1991.

[1] Statistic does not include the one time spike in spending for Operations "Desert Shield" and "Desert Storm". However, these costs were reimbursed by donations from foreign nations.

(3) By the end of fiscal year 1994, the number of civilians employed by the DoD will be 198,000 below the level in place when the Berlin Wall came down.

(4) The reduction of 711,000 military and civilians since the Berlin Wall came down is approximately equal to the entire population of San Francisco or Baltimore.

(5) The projected uniformed strength by 1997 of 1,400,000 would be the lowest number of personnel in the armed forces in fifty seven years. (See Manpower Chart)

(6) This year's spending level for defense as a percent of the gross national product is projected to be the lowest it has been since before World War II with the exception of fiscal year 1948.

(7) U.S. military presence either has or soon will be ended, reduced or placed on standby at over 800 overseas installations.

(8) A rapid reduction in the U.S. base structure is ongoing.

(9) Millions of jobs are being eliminated in the private sector as a result of these reductions.

(10) The scope of the reductions in defense is especially noticeable in the procurement account as shown in the following table:

Budget authority for procurement in constant fiscal year 1994 dollars

Fiscal year:	*In billions*
1985	$126.6
1986	117.2
1987	98.2
1988	94.3
1989	90.3
1990	89.6
1991	76.9
1992	65.9
1993	54.8
1994	45.5

(11) The procurement account has declined by 64% in nine years.

(12) Budget outlays for national defense as a percentage of the federal budget are the lowest since before World War II. (See allocation of Federal Outlays table.)

In historical perspective and in the perspective of America's total wealth, the funds provided in this budget for defense are indeed modest.

There are those who would argue that because of the demise of the Soviet Union, reductions in defense spending should be made even deeper than the dramatic reductions outlined above. Unfortunately, the demise of the Cold War has not brought a tranquil era in the world. Interestingly, the major engagements and deployments of U.S. forces in the past decade or so have had nothing to do with communism:

—The attack on Libya;

—The invasion of Panama;

—The Persian Gulf War; and

—The deployment to Somalia.

Every daily newscast brings home the obvious point—the post-Cold War era is a volatile and dangerous time in which America, as the world's only superpower, must maintain an adequate and robust national defense posture.

NON-MILITARY EXPENDITURES IN DEFENSE

An additional burden faced in the defense budget is the billions of dollars of expenditures for programs which, though necessary, do not directly contribute to national security. These expenditures are outlined in the following table which, in addition to this bill, includes expenditures in the Military Construction appropriations bill and the defense related portion of the Energy and Public Works appropriations bill.

Program	Dollars
DoD Environmental Expenditures	$4,593,000,,000
DoD Economic Conversion	3,231,025,000
DoE Environmental Expenditures Related to Nuclear Programs	5,185,877,000
Military Construction Environmental Expenditures and Base Closure	3,028,370,000
Total	16, 038,272,000

Funding for these programs has grown dramatically in recent years and is expected to remain at high levels for the foreseeable future, thus putting a severe strain on the defense resources during a time of rapidly declining budgets.

Following are the tables referred to earlier:

ACTIVE DUTY MILITARY MANPOWER LEVELS SINCE FISCAL YEAR 1941

Fiscal year:	Manpower
1941	1,801,000
1942	3,859,000
1943	9,045,000
1944	11,452,000
1945	12,056,000
1946	3,025,000
1947	1,582,000
1943	1,444,000
1949	1,614,000
1950	1,459,000
1951	3,249,000
1952	3,636,000
1953	3,555,000
1954	3,302,000
1955	2,935,000
1956	2,806,000
1957	2,795,000
1958	2,600,000
1959	2,504,000
1960	2,475,000
1961	2,483,000
1962	2,808,000
1963	2,700,000
1964	2,688,000
1965	2,656,000
1966	3,094,000
1967	3,377,000
1968	3,548,000
1969	3,460,000
1970	3,066,000
1971	2,715,000
1972	2,323,000
1973	2,253,000
1974	2,162,000
1975	2,128,000
1976	2,082,000
1977	2,074,000
1978	2,062,000
1979	2,031,000

Fiscal year:	Manpower
1980	2,063,000
1981	2,101,000
1982	2,130,000
1983	2,162,000
1984	2,184,000
1985	2,206,000
1986	2,223,000
1987	2,243,000
1988	2,209,000
1989	2,202,000
1990	2,143,000
1991	2,077,000
1992	1,880,000
1993	1,799,000
1994	1,689,000
1997 (est)	1,400,000

[1] The budget as submitted projected a force structure of 1,400,000 by fiscal year 1997. The bottom-up review also projected a force structure of 1,400,000 to be reached in the five year defense plan but did not specify which year this goal would be attained.

ALLOCATION OF FEDERAL OUTLAYS

[In percent]

Fiscal year	National defense outlays	Social Security/Medicare	Net interest	Other Federal outlays	Total Federal outlays
1941	47.1	0.7	6.9	45.3	100.0
1942	73.0	0.4	3.0	23.6	100.0
1943	84.9	0.2	1.9	12.9	100.0
1944	86.7	0.2	2.4	10.7	100.0
1945	89.5	0.3	3.4	6.9	100.0
1946	77.3	0.6	7.4	14.6	100.0
1947	37.1	1.4	12.2	49.3	100.0
1948	30.6	1.9	14.6	52.9	100.0
1949	33.9	1.7	11.6	52.8	100.0
1950	32.2	1.8	11.3	54.6	100.0
1951	51.8	3.4	10.2	34.5	100.0
1952	68.1	3.0	6.9	21.9	100.0
1953	69.4	3.6	6.8	20.3	100.0
1954	69.5	4.7	6.8	18.9	100.0
1955	62.4	6.5	7.1	24.0	100.0
1956	60.2	7.8	7.2	24.9	100.0
1957	59.3	8.7	7.0	25.0	100.0
1958	56.8	10.0	6.8	26.4	100.0
1959	53.2	10.6	6.3	30.0	100.0
1960	52.2	12.6	7.5	27.7	100.0
1961	50.8	12.8	6.9	29.6	100.0
1962	49.0	13.4	6.4	31.1	100.0
1963	48.0	14.2	7.0	30.9	100.0
1964	46.2	14.0	6.9	32.9	100.0
1965	42.8	14.8	7.3	35.1	100.0
1966	43.2	15.4	7.0	34.4	100.0
1967	45.4	15.5	6.5	32.6	100.0
1968	46.0	16.0	6.2	31.8	100.0
1969	44.9	18.0	6.9	30.2	100.0
1970	41.8	18.6	7.3	32.2	100.0
1971	37.5	20.2	7.1	35.2	100.0
1972	34.3	20.7	6.7	38.3	100.0
1973	31.2	23.3	7.1	38.5	100.0
1974	29.5	24.3	8.0	38.3	100.0
1975	26.0	23.3	7.0	43.6	100.0
1976	24.1	24.1	7.2	44.6	100.0
1977	23.8	25.5	7.3	43.4	100.0
1978	22.8	25.4	7.7	44.1	100.0
1979	23.1	25.9	8.5	42.5	100.0
1980	22.7	25.5	8.9	42.9	100.0
1981	23.2	26.4	10.1	40.3	100.0

ALLOCATION OF FEDERAL OUTLAYS—Continued

[In percent]

Fiscal year	National defense outlays	Social Security/Medicare	Net interest	Other Federal outlays	Total Federal outlays
1982	24.8	27.2	11.4	36.6	100.0
1983	26.0	27.6	11.1	35.3	100.0
1984	26.7	27.7	13.0	32.6	100.0
1985	26.7	26.9	13.7	32.7	100.0
1986	27.6	27.2	13.7	31.5	100.0
1987	28.1	28.1	13.8	30.0	100.0
1988	27.3	28.0	14.3	30.4	100.0
1989	26.6	27.8	14.8	30.9	100.0
1990	23.8	27.7	14.7	33.8	100.0
1991	22.4	28.2	14.7	34.7	100.0
1992	20.7	29.4	14.4	35.4	100.0
1993	19.3	29.8	13.7	37.1	100.0
1994	18.1	30.9	14.0	37.0	100.0

FIVE YEAR DEFENSE PLAN

The Committee is concerned that the resources presently projected for the Five Year Defense Plan do not adequately finance the force structure embodied in the recently completed "bottom-up review", and further notes that Secretary Aspin has acknowledged that a $13 billion shortfall exists. The Committee directs that a Five Year Defense Plan which addresses any funding shortfall be submitted with the fiscal year 1995 defense budget request.

MOBILITY

A central focus of the downsized force structure is the need for a high degree of mobility in the strategic and tactical arena. This requirement is especially important as the U.S. continues its steady withdrawal from overseas bases. The following table lists the Committee's recommendations for a variety of programs which will enhance strategic and tactical mobility.

Program	Budget request	Committee recommendation
C–17	$2,318,000,000	$2,018,000,000
C–130	0	446,000,000
KC–135 Re-engining	0	160,000,000
Osprey	82,295,000	102,295,000
Maritime Fund	290,800,000	490,800,000

NO HOLLOW FORCE

From the Committee's perspective, the most important issue we face in the defense arena is maintaining a high quality force. There is, of course, a rapid turnover of personnel in the armed forces. For example, 40 percent of the military personnel in the Army have served four years or less. Because of this inevitable turnover, it is absolutely essential to continue to recruit, train and retain high quality personnel.

If there is an erosion of morale and quality of the troops, it will have a devastating impact on the ability of our forces to carry out their missions.

Unfortunately, there are some long lead indicators that the quality may be beginning to erode.

—The propensity to enlist has been declining as shown in a series of polls taken of high school seniors as to their intention to enlist.

—The number of recruits that are high school graduates had been at 100 percent for the services, but has declined in recent years.

—There is anecdotal and statistical evidence that the personal lives of many of our military personnel are in increased turmoil as the rapid downsizing proceeds.

The morale factor is partially impacted by the frequent deployment of troops for a wide variety of missions in recent years. For example, in its inspection trip to Somalia earlier this year, the Committee met with one Marine unit which had been deployed to the Persian Gulf for Operation Desert Shield/Storm during Christmas of 1990, was overseas on a rotational deployment during Christmas of 1991, was in Somalia for Christmas of 1992, and is scheduled for another rotational deployment overseas for Christmas of 1993. Over one half of the Marine Corps is deployed overseas one half of the time.

The Committee's concern for the morale and well being of American troops has been heightened by the high tempo of deployments this year, including:

—At its peak, the U.S. had 26,000 troops deployed to Somalia earlier this year to implement the U.N. resolution.

—Roughly 17,000 troops, including Naval personnel, are deployed in the Persian Gulf region to enforce the no-fly zones in northern Iraq and southern Iraq and as a contingency reserve as part of an international effort to support U.N. Security Council resolutions.

—Including the carrier task force in the Adriatic Sea and the deployment of Air Force personnel to northern Italy, over 10,000 troops are engaged either within or in the region of the former Yugoslavia. The mission being conducted includes enforcing the no-fly zone, delivery of humanitarian supplies and airborne early warnings.

—U.S. military forces are also providing a wide variety of support and services to various other U.N. operation and the U.N. Secretariat, and have provided disaster relief support to countries impacted by natural disasters.

To help ensure that a high quality and high morale force remains, the Committee has included a pay increase for uniformed personnel. The total included in the bill for the 2.2% pay increase is $1,055,050,000. Also, the Committee has added $1,100,000,000 in the operation and maintenance accounts for a wide variety of programs including facilities repair, maintenance backlog, and training.

GLOBAL COOPERATIVE INITIATIVES

During peacetime, the defense budget is designed to fund the equipping, training, and maintaining of a military force to deter aggression. However, the funding for actual military operations is not implicitly included in a peacetime defense budget submission. The incremental costs for funding actual military operations—where the high tempo of operations rapidly consumes resources—has tra-

ditionally required Congressional funding approval through the normal budget process and/or reprogrammings or supplemental budget requests.

For the most part, recent international missions—including Somalia, the no-fly zone over northern and southern Iraq and the no-fly zone over Bosnia—have been funded through the reprogramming of funds. In other words, to sustain the high tempo of operations in these international crises, funds are being taken away from training and readiness of units not deployed to these "hot spots", thus eroding the overall readiness of our forces.

The budget requested a total of $448,000,000 for the Global Cooperative Initiative which would provide resources for future peacekeeping, disaster relief and humanitarian assistance missions. A breakout of these funds are included in the following table:

GLOBAL COOPERATIVE INITIATIVES

[In millions of dollars]

	Request	Committee recommendations
Peacekeeping	$300	$300
Disaster relief	50	50
Humanitarian assistance	48	[1] 33
Promotion of Democracy	50	0
Total	448	383

[1] $15 million transferred to a separate account, "Humanitarian Assistance" for people of Afghanistan and Cambodia.

The Committee is supportive of the concept of a fund to pay for operations not anticipated at the time the budget is submitted to the Congress. However, the Committee is very concerned that by seeking a fund dedicated to peace making and peacekeeping, the administration is asking Congress to prospectively approve the necessary funding resources to engage in unspecified and undetermined future military operations. The Committee strongly disagrees with this precedent which incrementally erodes the constitutional prerogative of the Congress to control the purse strings.

Thus, while the Committee has provided $383,000,000 for the Global Cooperative Initiative, it has included bill language which states that fifteen days before approving the use of U.S. military personnel in carrying out any international humanitarian assistance, peacekeeping, peacemaking, or peace-enforcing operations, the President must notify the Appropriations and Armed Services Committees in accordance with established reprogramming procedures. The general provision also states that the notification must specify:

1. Estimated cost of the operation;
2. How it is to be paid for;
3. Projected duration and scope of the operation;
4. Goals of the operation; and
5. U.S. interests that will be served by the operation.

The Committee does not intend the language to preclude the quick deployment of U.S. troops in reaction to a sudden natural disaster such as the situation in Bangladesh a few years ago when that country was struck by a massive typhoon. The restrictions in the bill language on the Global Cooperative Initiative do not in-

clude the term "disaster relief". However, "humanitarian assistance" has been included in recognition of the potential of another situation such as in Somalia which has evolved from a straightforward humanitarian assistance program to a longer term military commitment.

IMPACT OF NEW EQUIPMENT ON PERSONNEL LEVELS

An important aspect of the wide variety of new equipment provided in this bill and other Defense Appropriations bills of recent years is the significant reduction in personnel that accrues as the new, more efficient systems are deployed. Part of these personnel savings accrue from the tremendous improvement in equipment reliability which not only enhances combat effectiveness but brings manpower and dollar savings because of the resulting decline in spare parts inventory, repair personnel and training requirements.

For example the Navy's new standard teleprinter, which is the shipborne replacement for an obsolete electro-mechanical model, has enabled the Navy to:

—Reduce the number of teleprinter maintenance qualifed personnel on each aircraft carrier from 10 to 2, and on each destroyer from 4 to 1.

—Reduce instructor billets for teleprinter maintenance personnel from 20 to 4.

—Reduce logistic support requirements from 3500 parts to 8 circuit cards.

Similarly, the Army's new Mobile Subscriber Equipment (MSE) has resulted in the reduction of thousands of personnel slots while simultaneously improving the Army's tactical communications capabilities.

The Committee added funds in the Guard and Reserve for laser assisted heavy construction equipment which will save manpower in the operation of heavy construction equipment.

The cumulative impact of these manpower savings is quite significant defense wide and is especially important in this era of rapidly declining force structure.

HIGHLIGHTS OF COMMITTEE RECOMMENDATIONS

ACTIVE MILITARY PERSONNEL

The Committee recommends a total of $61,884,644,000 for active military personnel, an increase of $1,012,814,000 above the budget request. The Committee agrees with the authorized end strength as requested in the President's budget. The Committee added $928,937,000, above the budget request, for a 2.2 percent pay increase for fiscal year 1994 for active military personnel.

GUARD AND RESERVE

The Committee recommends a total of $9,392,876,000, an increase of $108,936,000 above the budget request for Guard and Reserve personnel. The Committee agrees with the authorized end strength as requested in the President's budget, but added additional end strength in the Navy Reserve, Marine Corps Reserve, and Air Force Reserve for restoration of programs that were de-

leted. The Committee added $126,113,000 for a 2.2 percent pay increase for fiscal year 1994 for Guard and Reserve personnel.

OPERATION AND MAINTENANCE

The Operation and Maintenance appropriation provides the resources necessary to maintain high readiness of our armed forces and to enhance the quality of life of our military personnel, their families and civilian personnel. The Committee recommends a total O&M funding level of $73,761,103,000, a decrease of $478,205,000 from the budget request.

The Committee agrees to the transfer of $3.5 billion from the Defense Business Operations Fund (DBOF) and the National Defense Stockpile Fund to the Services' O&M accounts. In addition, the Committee provided an additional $1.1 billion to maintain the Services' OPTEMPOs at high levels; to fund shortfalls in base operations support; and to reduce the depot maintenance backlog and facilities repair and maintenance backlog.

Because of increasing involvement of our armed forces in peacekeeping and disaster relief missions, the Committee agrees to the Department's request for funds to pay for these missions.

PROCUREMENT

The Committee recommends $45,654,493,000 in new obligational authority. Major programs funded in the bill include the following:

$386,000,000 for 24 AH–64 Attack helicopters.
$233,557,000 for 60 UH–60 Blackhawk helicopters.
$216,000,000 for 36 AHIP helicopter modifications.
$135,231,000 for 144 Avenger systems.
$207,268,000 for 1,000 Javelin missiles.
$276,717,000 for 34 MLRS launchers and 12,000 MLRS rockets.
$152,559,000 for 255 ATACMS missiles.
$192,437,000 for the Bradley Fighting Vehicle Base Sustainment Program.
$159,526,000 for the 155MM Howitzer program.
$119,701,000 for 72 Abrams Upgrades.
$620,787,000 for Army ammunition.
$242,737,000 for 5,847 HMMWV vehicles.
$458,258,000 for 945 Palletized Loading Systems.
$352,465,000 for SINCGARS radios.
$129,601,000 for 4 AV–8B aircraft.
$1,521,534,000 for 36 F–18 aircraft.
$276,484,000 for 12 CH/MH–53E helicopters.
$143,274,000 for 12 AH–1W helicopters.
$189,276,000 for 7 SH–60B helicopters.
$149,839,000 for 8 SH–60F helicopters.
$259,225,000 for 12 T–45 trainers.
$118,461,000 for E–6 modifications.
$983,345,000 for 24 Trident II (D5) missiles.
$248,288,000 for 216 Tomahawk missiles.
$215,028,000 for 220 Standard missiles.
$100,125,000 for 108 Mk–48 ADCAP Torpedoes.
$1,000,000,000 for the Carrier Replacement program.
$2,642,772,000 for 3 DDG–51 destroyers.
$893,848,000 for 1 LHD–1 amphibious assault ship.

$124,175,000 for 1 Mine Warfare command and control ship.
$604,339,000 for the B–2 aircraft.
$724,700,000 for 24 F–16 fighter aircraft.
$1,772,809,000 for 6 C–17 transport aircraft.
$241,823,000 for 1 JSTARS aircraft.
$268,325,000 for F–15 modifications.
$203,143,000 for C–135 modifications.
$489,929,000 for 749 AMRAAM missiles.
$470,585,000 for Space Boosters.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

The Committee recommends $36,546,014,000 for the RDT&E title, a reduction of $2,074,313,000 from the budget request. Specific recommendations of selected programs are as follows:

The Committee provided $367,080,000, the budget request, for the RAH–66 Comanche helicopter.

The Committee provided $237,846,000, the budget request, for the Armored Systems Modernization program. The Committee also added $33,000,000 for Bradley upgrades, $34,600,000 for the M1A2 program, and $20,000,000 for the Advanced Command and Control Vehicle above the budget request.

The Committee provided $92,672,000 for the Sense and Destroy Missile Armament Missile (SADARM), an increase of $57,661,000 to the budget request.

The Committee added $25,000,000 for Horizontal Battlefield Integration program to digitize the battlefield.

The Committee added $25,000,000 to accelerate the Line-of-Sight, Antitank (LOSAT) program.

The Committee provided $476,000,000, the budget request, for the Centurion next generation attack submarine.

The Committee provided $92,328,000, the budget request, for Advanced Surface Machinery Systems which provides next generation propulsion for surface ships.

The Committee provided $460,764,000 for ship self-defense, an increase of $106,800,000 to the budget request.

The Committee denied the request for $399,218,000 for development of the A/F-X next generation attack aircraft.

The Committee provided $1,485,496,000, the budget request, for the F–18E/F aircraft development program.

The Committee provided $149,995,000 for upgrades to the F–14 aircraft, an increase of $78,000,000 to the budget request.

The Committee provided an additional $205,000,000 for Navy manufacturing technology programs.

The Committee provided $80,000,000 for the National Aero Space Plane, an increase of $36,741,000 to the budget request.

The Committee provided $126,543,000 for the B–1B Bomber, an increase of $33,000,000 to the budget request.

The Committee provided $790,497,000, the budget request, for the B–2 Advanced Technology Bomber. In addition, the Committee added $48,000,000 for the GPS-Aided Targeting System/GPS-Aided Munition (GATS/GAM) to provide an earlier and effective precision guided conventional munition for the B–2.

The Committee provided $154,799,000 for the C–17 program, a decrease of $25,000,000 to the budget request.

The Committee provided $2,250,997,000, the budget request, for the F-22 Advanced Technology Fighter.

The Committee provided $125,014,000 for high definition display systems, an increase of $67,800,000 to the budget request.

The Committee provided $2,870,040,000 for Ballistic Missile Defense (formerly the Strategic Defense Initiative), the amount recommended by the House Armed Services plus funding for the Brilliant Eyes program as explained in the Space and Related Programs section of this report, a decrease of $767,095,000.

The Committee provided $190,556,000 for maritime technologies, a new program.

The Committee provided $624,000,000 for dual use technologies, an increase of $300,000,000 to the budget request.

The Committee denied the request of $147,733,000 for a Departmental level manufacturing technology program, and provided funds in the Service accounts instead.

The Committee transferred $122,819,000 for the High Performance Computing Modernization Program to the Procurement, Defensewide appropriation.

Health Care Programs

The Committee commends the Department for the steps it has taken to continue developing a comprehensive health care program for all eligible beneficiaries, without reducing access or quality of care, but while trying to reduce costs attributed to the rapid rate of health care inflation. The Committee recommendation includes an additional $300,000,000 to begin to fund the large unfunded requirement that accompanied the President's budget request. The Committee understands that an additional $231,000,000 in unfunded requirements still exists for the Department in fiscal year 1994, and the Committee expects the Department to fund this requirement without cutting access or benefits. The Committee hopes to continue to work closely with the Department to provide the most cost efficient health care available.

The Committee has recommended a one-year freeze in all medical personnel reductions until a comprehensive review is completed by the General Accounting Office (GAO) focusing on why the Department has a willingness to reduce military and civilian medical personnel end strengths which is increasing the CHAMPUS budget more rapidly than these personnel reductions are saving. The Committee also requests that civilian personnel be exempt from any Department imposed hiring freezes since this also increases the CHAMPUS budget expenses. A complete discussion of all health care issues is found in Title VI, Other Department of Defense programs.

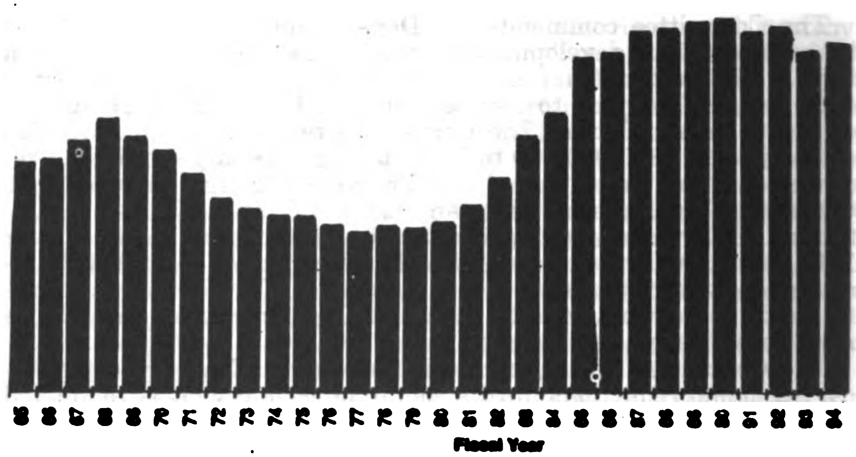
For medical research and development, the Committee recommends an additional $183,642,000 above the President's budget request for such important initiatives as: AIDS research ($+30,000,000), breast cancer research ($+30,000,000), bone marrow research ($+37,000,000), prostate cancer research ($+2,000,000), and cooperative DOD/Veterans research ($+30,000,000). The Committee also reaffirmed its strong support for beginning the much needed construction of the new Walter Reed Army Institute of Research. A complete discussion of these is-

sues are found in Title IV, in the medical research section of Research, Development, Test and Evaluation.

NATIONAL FOREIGN INTELLIGENCE PROGRAM

The National Foreign Intelligence Program (NFIP) requests significant real growth in fiscal year 1994 when compared with actual appropriations in fiscal year 1993. The following diagram—which is based upon an unclassified chart provided last year by the Director of Central Intelligence and updated for the final fiscal year 1993 appropriated level and the fiscal year 1994 budget request—is in constant dollars and shows the tremendous real growth in the NFIP over the last 30 years. The funding level has come down little from the peak of the Cold War. Due to the classified nature of intelligence programs, the dollar figures have been omitted from the chart.

National Foreign Intelligence Program



As discussed under Title VII in this report and in the classified report which accompanies it, the Committee has recommended a net reduction to the NFIP of $880,428,000. This will provide robust funding for critically important intelligence programs while holding the total program funding to the fiscal year 1993 level.

UNOBLIGATED AND UNEXPENDED BALANCES

The following tables compare the unobligated and unexpended balances for the military functions of the Department of Defense over the past 28 years for both the entire Defense Budget and the accounts covered by this bill. The unobligated balances associated with the accounts covered by this bill are projected in the budget to decrease between the end of the fiscal year 1992 and the end of fiscal year 1994 from $49.7 billion to $24.8 billion. The unexpended

balances at the end of fiscal year 1992 and the end of fiscal year 1994 are projected to decrease from $217.4 billion to $176.1 billion.

UNOBLIGATED BALANCES, FISCAL YEARS 1966–94

[In millions of dollars]

Fiscal year	Total unobligated balance[1]	Pertaining to appropriations in the basic DoD appropriations bill
At the end of fiscal year:		
1966	13,854	11,830
1967	13,725	12,244
1968	13,494	11,666
1969	13,669	12,022
1970	13,565	11,966
1971	11,463	9,689
1972	10,203	8,319
1973	10,911	9,009
1974	13,393	11,131
1975	15,375	12,795
1976	18,655	15,697
1977	17,651	15,613
1978	18,531	16,772
1979	17,862	16,158
1980	19,369	17,750
1981	23,239	21,369
1982	31,354	28,025
1983	39,710	35,716
1984	47,817	43,617
1985	54,857	50,704
1986	53,449	50,210
1987	43,336	40,528
1988	39,010	36,169
1989	39,553	34,695
1990	39,996	34,927
1991	70,355	64,538
1992	54,949	49,668
1993 estimate	37,515	33,191
1994 estimate	28,432	24,792

[1] Basic and military construction bills.

Note.—Unobligated balances for revolving funds and trust funds are excluded from this table. The 1992 unobligated balance includes the following expired account totals: Totals $2,539,323; FY 92 $523,222; FY 91/92 $637,804; FY 90/92 $1,000,860; FY 88/92 $891,659.

UNEXPENDED BALANCES, FISCAL YEARS 1966–94

[In millions of dollars]

Fiscal year	Total unexpended balance[1]	Pertaining to appropriations in the basic DoD appropriations bill
At the end of fiscal year:		
1966	38,540	35,441
1967	42,541	39,937
1968	43,225	40,111
1969	40,957	38,157
1970	37,394	35,755
1971	33,814	30,953
1972	33,829	30,614
1973	37,143	33,462
1974	40,569	36,522
1975	40,515	35,977
1976	47,539	42,964
1977	58,616	53,785
1978	69,125	64,632

UNEXPENDED BALANCES, FISCAL YEARS 1966–94—Continued

[In millions of dollars]

Fiscal year	Total unexpended balance [1]	Pertaining to appropriations in the basic DoD appropriations bill
1979	77,423	72,619
1980	84,118	79,658
1981	102,087	96,535
1982	129,855	122,075
1983	159,792	150,605
1984	190,409	180,218
1985	226,231	214,607
1986	235,160	223,587
1987	240,141	229,140
1988	240,722	230,211
1989	234,911	223,991
1990	235,437	224,856
1991	255,332	243,112
1992	231,223	217,436
1993 estimate	205,271	192,031
1994 estimate	189,905	176,060

[1] Basic and military construction bills.

Note.—Unexpended balances for revolving funds, trust funds and unfunded contract authority are excluded from this table. Effective with the fiscal year 1986 Budget, the Retired Pay Defense appropriation was presented in the DOD-Civil Chapter. Therefore, fiscal year 1984 unexpended balances of $40,512,000 in the Retired Pay Defense Appropriation was not included in the DoD Military Chapter. The above table also excludes Retired Pay Defense starting in fiscal year 1984. A great deal of the unexpended balances represent legally binding documents calling for ultimate cash payment (unliquidated obligations) such as contracts for ship, aircraft, or missile construction. (Such major weapons systems are normally funded even though deliveries may not occur for 2 or 3 years.) The remaining unobligated balances represent amounts which are made available to fund approved programs, but which are not yet obligated in the technical legal sense. By and large, these funds are committed to the programs for which initially appropriated awaiting the completion of the contracting or other legal prerequisites of obligations.

Reprogramming Actions Applicable to the Department of Defense Appropriations Act

Throughout the fiscal year, the Department of Defense is given authority to reprogram or transfer funds to programs considered by DOD to be of higher priority. As in any financial plan, funding requirements change during the fiscal year making it necessary to institute certain adjustments. While the Committee realizes a certain degree of flexibility is needed in any budget plan, it feels these reprogramming actions should be kept to an absolute minimum.

The reprogramming actions consist of reprogrammings requiring specific congressional approval, reprogrammings requiring congressional notification and reprogrammings able to be carried forth by the Department of Defense without congressional action or notification. As is reflected in the following table, for fiscal year 1992, a total of 494 reprogramming actions were implemented by the Department of Defense totaling some $2,390,000,000.

REPROGRAMMING ACTIONS FOR FISCAL YEARS 1985–92

[Dollars in millions]

Fiscal year	Number of actions	Total amount
1985:		
Requiring congressional action	72	1,499
Not requiring congressional action	876	2,081
1986:		
Requiring congressional action	51	1,401
Not requiring congressional action	615	1,494

REPROGRAMMING ACTIONS FOR FISCAL YEARS 1985-92—Continued

[Dollars in millions]

Fiscal year	Number of actions	Total amount
1987:		
Requiring congressional action	45	1,705
Not requiring congressional action	620	1,726
1988:		
Requiring congressional action	51	3,506
Not requiring congressional action	547	1,512
1989:		
Requiring congressional action	35	2,564
Not requiring congressional action	640	1,501
1990:		
Requiring congressional action	32	3,251
Not requiring congressional action	628	1,652
1991:		
Requiring congressional action	13	3,369
Not requiring congressional action	559	1,401
1992:		
Requiring congressional action	2	1,238
Not requiring congressional action	492	1,152

FORCES TO BE SUPPORTED

DEPARTMENT OF THE ARMY

The fiscal year 1994 budget is designed to support active Army forces of 13 divisions, 4 separate brigades and 3 armored cavalry regiments, and reserve forces of 8 divisions, 14 separate brigades, 7 roundout/roundup brigades to active divisions and 1 armored cavalry regiment. These forces provide the minimum force necessary to remain a superpower, meet enduring defense needs, and execute the National Military Strategy.

A summary of the major active forces follows:

	Fiscal year		
	1992	1993	1994
Divisions:			
Airborne	1	1	1
Air Assault	1	1	1
Light	4	4	3
Infantry	1	1	1
Mechanized	5	4	4
Armored	2	3	3
Total	14	14	13
Non divisional Combat units:			
Armored cavalry regiments	3	3	3
Separate brigades	4	4	4
Total	7	7	7
Active duty military personnel, end strength (thousands)	611.3	575	540

DEPARTMENT OF THE NAVY

The fiscal year 1994 budget supports ship battle forces totalling 413 ships at the end of fiscal year 1994, a decrease from fiscal year 1993. Forces in fiscal year 1994 include 18 strategic ships, 12 aircraft carriers, 322 other battle force ships, 45 support ships, 16 re-

serve force ships, 1890 Navy/Marine Corps tactical/ASW aircraft, 713 Undergraduate Training aircraft, 427 Fleet Air Support aircraft, 618 Fleet Air Training aircraft, 595 Reserve aircraft, 182 RDT&E aircraft, and 644 aircraft in the pipeline.

A summary of major forces follows:

	Fiscal year		
	1982	1983	1984
Strategic Forces	33	24	18
Submarines	29	22	16
Other	4	2	2
SLBM Launchers (MIRV)	568	496	358
General Purpose	361	351	334
Aircraft Carriers	14	13	12
Surface Combatants	134	125	123
Submarines	87	88	84
Amphibious Warfare Ships	59	55	52
Combat Logistics Ships	50	50	48
Other	17	20	15
Support Forces	60	50	45
Mobile Logistics Ships	18	17	14
Support Ships	42	33	31
Mobilization Category A	19	18	16
Surface Combatants	16	16	16
Amphibious Warfare Ships	3	2	0
Total Ships Battle Force	473	443	413
Total Local Defense/Misc Forces	166	167	182
Auxiliaries/Sealift Forces	146	150	166
Surface Ships	0	0	2
Coastal Defense	2	3	11
Mobilization Category B	18	14	3
Mine Warfare Ships	8	4	1
Support Ships	2	2	2
Surface Combatants	8	8	0
Naval Aircraft:			
Primary Authorized Aircraft (Plus-Pipe)	5,795	5,280	5,089
Authorized Pipeline	795	689	664
Tactical/ASW Aircraft	2,128	2,014	1,890
Fleet Air Training	694	650	618
Fleet Air Support	465	460	427
Training (Undergraduate)	891	736	713
Reserve	611	537	595
Research and Development	211	194	182
Naval Personnel:			
Active	726,511	708,300	654,900
Navy	541,921	526,400	480,800
Marine Corps	184,590	181,900	174,100
Reserve:			
Navy	142,276	133,675	113,400
SELRES	119,351	111,974	94,031
FTS (TARS)	22,925	21,701	19,369

	Fiscal year 1992	1993	1994
Marine Corps	42,195	42,315	36,900
SELRES	39,915	40,030	34,781
FTS (TARS)	2,280	2,285	2,119

DEPARTMENT OF THE AIR FORCE

The fiscal year 1994 Air Force budget was designed to support a total active inventory force structure of 52 fighter and attack squadrons, 10 Air National Guard air defense interceptor squadrons, and 15 bomber squadrons, including B–2's, B–1s, and B–52's. The Minuteman and Peacekeeper ICBM forces will consist of 667 active launchers.

A summary of the major forces as proposed in the President's Budget follows:

	Fisca year 1992	1993	1994
USAF fighter and attack squadrons (Active)	58	58	52
Air defense interceptor squadrons (ANG)	12	12	10
Strategic bomber squadrons (Active)	18	15	15
ICBM Launchers/silos	1,000	1,000	1,000
ICBM Missiles/Boosters	912	787	667
USAF airlift squadrons (Active):			
Strategic airlift	20	17	17
Tactical airlift	12	11	11
Total airlift	32	28	28
Total active inventory [1]	7,642	7,572	7,345

[1] Includes Active, ANG, AFRES—Except foreign government owned USAF operated aircraft.

End strength	1992	1993	1994
Active duty	470,315	444,900	425,700
Reserve component	201,000	201,600	199,200
Air National Guard	119,100	119,300	117,700
Air Force Reserve	81,900	82,300	81,500

SPACE AND RELATED PROGRAMS

INTRODUCTION

In fiscal year 1992, the Department of Defense and the intelligence community spent $15 billion for space programs. Even with the projected decline in overall national security spending, it is doubtful that space programs will decrease below that amount for the foreseeable future. The Committee, however, has become increasingly concerned that the basic processes which govern military and intelligence space programs have become ineffective. While the individual programs are, in most instances, well designed and managed, there is inadequate coordination between programs, poor definition of greatly changed requirements, insufficient responsiveness to the users of space systems, inattention to potential cost savings in a fiscally constrained environment, and a lack of clearly defined responsibilities for space programs at the senior levels in the Pentagon.

Management fragmentation was evident at the Committee's hearing on Department of Defense space programs. DOD sent witnesses with written statements from eight different organizations, including four witnesses who also made oral statements. Despite the large numerical attendance at the hearing, none of these senior Defense officials had a charter to speak for DOD as a whole. None had responsibility for ensuring that military or intelligence community launch operations, payload design or ground station management were optimally integrated and financed at the least possible cost for the maximum possible benefit.

The Committee is certainly not the first organization to discover these flaws. A partial list of recent major government studies which were critical of the management of space programs includes the following:

A Post Cold War Assessment of U.S. Space Policy (the Wilkening Report)

The Future of U.S. Space Launch Capability (the Aldridge Report)

The Future of the U.S. Space Industrial Base (the Fink Report)

The Blue Ribbon Review of the Air Force in Space in the 21st Century (the Moorman Report)

Final draft of the *Roles, Missions, and Functions of the Armed Forces of the United States* (the Powell Report).

Taken collectively, the clearly recurrent theme of these reports indicates that while U.S. space policy and program management is not broken, it is in need of major repair. Consequently, the Committee believes that immediate steps must be taken to begin this needed overhaul and provides the following conclusions and direction to the Department of Defense and the intelligence community.

LAUNCH

Medium Lift Vehicles. New launch vehicles are required to maintain U.S. commercial launch competitiveness and, concomitantly, to keep U.S. government launch costs down. DOD is, therefore, directed to review any future requirement for ATLAS and DELTA launch vehicles and to begin aggressive development of a new medium lift vehicle (currently termed Spacelifter by DOD) with particular attention being paid to cost containment. Because the majority of the payloads to be launched on Spacelifter will be into geosynchronous—not low earth—orbit, the Secretary of Defense should ensure that the basic Spacelifter design is optimized for the most economical orbit configuration.

Small Lift Vehicles. Because of the probable increase in the number of small payloads being launched by the government and commercial firms, DOD should continue not only to evolve improvements to Pegasus and Taurus class vehicles, but also should help spur development of alternative competitive vehicles.

Heavy Lift Vehicles. Titan IV is the only heavy lift expendable launch vehicle currently in the U.S. launch inventory. Because there are no commercial payloads and few government payloads which require the capability that only the Titan IV provides, the current cost for a single launch exceeds $350,000,000, excluding the payload costs. That cost can only be expected to increase dramati-

cally as the number of payloads continues to decrease over the next decade. While Titan IV is a very capable system that has launched the most sophisticated and expensive satellites ever built, it is clear that it is growing increasingly unaffordable. Consequently, DOD and the intelligence community should begin long range planning so that, after completion of the current contract for 41 Titan IV vehicles, current and planned large payloads are downsized sufficiently to be accommodated on Spacelifter. In the event that one or two payloads cannot be so downsized by the first decade of the 21st century, DOD and the intelligence community should work with NASA to determine the potential for an occasional launch on the space shuttle.

Research and development. In order for the U.S. to maintain a competitive edge in commercial launch and to keep government launch costs at a minimum, it is critical that a thoughtful long term research and development program be initiated for the next generation of launch vehicle after Spacelifter. The Committee, therefore, directs that DOD: (a) initiate a very slow, long-term technology effort which would lead to development of a prototype, single stage, reusable, unmanned, launch vehicle capable of placing medium payloads into orbit at competitive prices; and (b) create new DOD funding lines for technology development and risk reduction in key areas of importance to the long-term health of the U.S. launch program. As discussed elsewhere in this report, the Committee has provided $50,000,000 to the Advanced Research Projects Agency for this purpose.

Manned versus unmanned launch vehicles. While U.S. government policy for the last 30 years has supported a continuing role for man in space, fulfilling that mission has fallen to NASA. There is no projected requirement for man-rated launch vehicles in either DOD or the intelligence community. The Committee, therefore, stipulates that neither DOD nor the intelligence community will incur any costs associated with man-rating an expendable launch vehicle. However, DOD will consult with NASA at engineering decision points as to the cost to make new vehicles such as Spacelifter man-rated, but—without explicit prior Congressional approval—DOD will not be responsible for any costs associated with maintaining a man-rated option.

Use of Excess ICBM's. The U.S. taxpayers have funded billions of dollars for ICBM development and procurement. With the recent political changes in the world, there are now significant numbers of excess assets that have already been paid for that could, and should, be used as space launch vehicles. However, it is also important that these assets should not be used without considering any potentially adverse impact on the U.S. commercial launch industry and ultimately on government launch costs. Where possible, these excess ICBM's should be used as launch vehicles only: (a) in compliance with any applicable provisions of START; (b) for suborbital payloads or tests; or (c) to support University level research that otherwise might not be affordable.

INFRASTRUCTURE

Testimony before the Committee has shown that the ground launch infrastructure of the Department of Defense is in need of

renovation and modernization. Current estimates of the costs range from $1 billion to $2 billion. While the price tag appears large, deferring upgrading these facilities can only cause the costs to grow even larger. The Air Force is to be praised for its effort as a part of the fiscal year 1994 budget request to significantly increase the funding for these programs. The Committee believes that this modernization program should be continued in order to reduce operating costs as well as the time required between launches from the same or nearby launch pads. In addition, the Committee believes that DOD range and tracking stations have been developed in an *ad hoc* manner over the years and need to be modernized according to a central architecture for more efficient and cost effective operations. Consequently, the Committee directs DOD to provide, as a part of the fiscal year 1995 budget submission, a plan to modernize and manage the DOD space infrastructure including launch facilities as well as range and tracking stations. To accelerate this important effort, the Committee has included an increase of $37,000,000 improvements to the space launch ground infrastructure.

PAYLOADS

It is likely that the Department of Defense and the National Reconnaissance Office spend more annually on satellite development and acquisition than the entire rest of the federal government combined. Moreover, the technological advances funded by these organizations are also critical pacing elements for the entire U.S. commercial satellite industry as well. Nevertheless, significant annual savings are possible through the implementation of several management policies that have support throughout the space community, but have not been implemented due to a lack of central leadership.

Downsizing. With: (a) recent advances in technology, (b) changes in the military and intelligence requirements due to changes in the world situation, and (c) significant savings possible through using smaller launch vehicles, DOD and the intelligence community should begin an aggressive program to place a priority on downsizing all payloads under development.

Common Bus. At present, virtually every satellite bus is unique. Because of this, there are no economies of scale in production either for the bus itself, or for the many interfaces involved in highly complex satellite payloads. Hundreds of millions of dollars could be saved annually if DOD and the intelligence community were to cooperate on the development of a standard family of common satellite buses to reduce costs and reduce payload integration time. Moreover, if significant inroads could be made on common production processes as well as on increasing the fraction of the satellite that is available for the payload and reducing that portion dedicated to the basic host structure, hundreds of millions of additional dollars could be saved every year. The Secretary of Defense and the Director of Central Intelligence are directed to submit a joint plan with the fiscal year 1995 budget submission which will serve as a well-lit path toward common buses by the turn of the century. The Committee has included a common bus initiative in the budget of

the Advanced Research Projects Agency as discussed elsewhere in this report.

General communications requirements. Space plays a critical role in communications connectivity for both military and intelligence programs. However, there appears to be no integrated plan for the role of space in this area. The Committee believes military and intelligence communications requirements could be met at a reduced cost through better management and through more extensive use of communications improvements made in commercial industry. In conjunction with the intelligence community, DOD is directed to develop and publish a long-haul communications masterplan clearly delineating the role of satellites for specific frequencies, decision points for technology insertion, block changes, etc. In addition, DOD and the intelligence community are directed that all DOD satellite communications requirements will be met: (a) first through purchase of commercial services; (b) then through DOD purchase of off-the-shelf commercial hardware; and (c) finally, where there is a clear and compelling requirement, by development of unique communications satellites to be built according to government specifications.

EHF Communications. Despite the recent changes in the world, for the foreseeable future—that is, as long as there is a requirement to fight in a highly stressed conventional war or a large scale nuclear war—there will be a requirement for extremely high frequency (EHF) satellite communications. However, the Committee believes that an effort should begin for long range planning to reduce costs and improve capabilities by: developing new payloads (compatible with existing MILSTAR terminals) by inserting more modern technology and separating the medium data rate (MDR) and low date rate (LDR) payloads into separate vehicles; and downsizing payloads to shift from Titan IV to a smaller launch vehicle. The Committee fully supports MILSTAR, but has included a reduction of $100,000,000 in fiscal year 1994 to eliminate excess funding. The Secretary of Defense is requested to provide a plan to begin a deployable, rapid-prototype of a low-cost MDR EHF satellite to meet the projected tactical communications requirements of deployed U.S. military forces as an eventual follow-on to MILSTAR.

Environmental satellites. The Committee believes that the potential exists to develop an integrated environmental satellite program for the entire federal government which could reduce costs without adversely impacting on any agency's mission. Consequently, no funds are available in fiscal year 1994 for any environmental satellite development effort for DOD or the intelligence community except as a part of a U.S. government-wide program for a single satellite or family of satellites. In addition, since the Air Force currently has several Defense Meteorological Satellite Program (DMSP) satellites completed and in storage, the Committee believes that two of the excess satellites should be transferred to the National Oceanographic and Atmospheric Administration to meet interim NOAA requirements pending fielding of a fully integrated government-wide architecture.

Global Positioning System. With the increased commercial uses of GPS and the advent of very precise commercial "differential"

broadcasts, it is questionable as to the utility of maintaining a two-tier GPS broadcast whereby DOD reserves exclusively for its own use a more accurate GPS signal. The Committee believes that DOD could reduce its costs by deleting the encrypted GPS broadcast and directs the Secretary of Defense to review the feasibility and submit his findings not later than February 1, 1994. In addition, although DOD should retain the lead in GPS development, deployment, and operations, the increasing commercial potential should be exploited by greater involvement in the system planning and design by U.S. government civilian agencies. However, transfer of any significant control over system acquisition or operation to any civilian federal agency must be accompanied by a corresponding transfer of funding responsibilities.

Broad area search imagery. The military CINC's have consistently rated improved broad area imagery as a high priority. The Committee is concerned over the inadequate response of the intelligence community to this requirement and over the increasing unlikeliness that LANDSAT will adequately fulfill this mission. Consequently, the Committee directs the Advanced Research Projects Agency (ARPA) to take the lead in developing and launching a deployable, rapid-prototype satellite and supporting command and control processing and reporting systems that will meet the military tactical requirement for broad area search imaging. ARPA is directed that, where possible, it will include civilian imaging needs. The Committee directs that the Joint Chiefs of Staff be responsible for taking the lead in defining the broad area search imagery and user products requirements against which ARPA will design the system. As a minimum, data collected from this system should possess metric accuracy sufficient for the production of mapping products.

Tactical signals intelligence. As discussed in detail in the classified report which accompanies this unclassified report, the Committee is extremely concerned that the current process for developing space systems which addresses tactical signals requirements is seriously flawed. While the national intelligence organizations are slowly adapting to changes in the world, it is clear that urgent tactical requirements continue to go unmet while billions of dollars continue to be spent to meet strategic requirements. In order to fully support the CINC's tactical signals intelligence requirements, the Committee has added $80,000,000 and directs the Advanced Research Projects Agency (ARPA) to begin development of a low cost, deployable, rapid-prototype signals intelligence satellite. The Committee also directs that the Joint Chiefs of Staff be responsible for defining the tactical signals intelligence requirements that are provided to ARPA for system design. Additional details are provided in the classified report which accompanies this unclassified report.

Research and development. Research and development programs for payloads are presently scattered across the military departments and defense agencies with little coordination to prevent either duplication or, conversely, no funding whatsoever on certain critical technologies. The Committee believes that the Secretary of Defense should designate a single manager to be assigned respon-

sibility for funding research and development programs for advanced generic payload technologies.

ORGANIZATION AND MANAGEMENT

Many of the problems that the Committee and the various space reports cited above have addressed are directly attributable to a lack of a coherent management structure for national security space programs. While there may have been valid reasons why the various space responsibilities have evolved the way they have today, there is too much at stake in terms of reducing costs, meeting requirements, and facing aggressive international competition to permit business as usual. Consequently, in order for the Committee to address these issues in a comprehensive manner as a part of the fiscal year 1995 hearings, the Secretary of Defense is directed to provide to the Congress no later than February 1, 1994 a detailed five year plan which would implement, beginning on January 1, 1996, the following organizational changes. The Committee also solicits the comments of the Secretary as to pros and cons of actually implementing each of the following recommendations.

Acquisition Management. Over a five year period, the Secretary of the Air Force will be given Executive Agent responsibility for all—including payloads, launch, and ground infrastructure—DOD space program acquisition and R&D. The Assistant Secretary of the Air Force for Space shall be delegated the responsibility to act as the acquisition executive for all space programs on a day to day basis.

Appropriation accounting. As soon as possible, all space procurement and research and development funding will be centralized into a single DOD-wide appropriation which reflects the requirements of all the military services, and defense agencies.

Operational and warfighting responsibilities. CINCSPACE will assume operational responsibility for all U.S. military space assets. In addition, CINCSPACE will assume the responsibility for ensuring that all military warfighting doctrine adequately reflects the pivotal role of space, and for developing adequate joint training exercises and military skill and doctrine schools. To ensure a cadre of career military personnel with space credentials, the Secretary will retain the individual service component space commands, and, when a vacancy occurs, fill the CINCSPACE position with the most qualified candidate regardless of service affiliation.

Requirements and Policy. A single office in OSD will be designated to coordinate all DOD space policy. This office will be responsible for ensuring that the space requirements of the military services, and the defense agencies are adequately addressed by both the Air Force and CINCSPACE.

NATIONAL TASK FORCE ON COUNTERTERRORISM

The *Intelligence Authorization Act for Fiscal Year 1994* (H.R. 2330) contained a sense of the Congress provision that the President should establish a national task force to review federal programs on fighting terrorism. The Committee fully supports the creation of this task force and directs that, within funds provided to

the Secretary of Defense in this bill, $5,000,000 be made available to finance this critically important effort.

COMMAND, CONTROL, COMMUNICATIONS AND INTELLIGENCE

TACTICAL INTELLIGENCE AND RELATED ACTIVITIES

The Department of Defense Tactical Intelligence and Related Activities (TIARA) encompass a diverse array of reconnaissance, surveillance and target acquisition programs which are primarily a functional part of the basic military force structure, and provide direct information support to combat operations. TIARA includes those activities outside the General Defense Intelligence Program which respend to operational command tasking for time-sensitive information as well as to national command, control, communications, and intelligence requirements.

Explanations of the Committee's specific recommendations for TIARA programs appear in the appropriate sections of this report or in the classified Annex. The funding provided for TIARA will fully support these activities in the forthcoming year.

One of the discoveries in Desert Storm was the lack of tactical intelligence systems available for the warfighter. The Committee is concerned at the intelligence community's efforts to reduce the capabilities in tactical intelligence in order to protect high cost national systems with questionable tactical value. The Intelligence Program Support Group (IPSG) assists the Assistant Secretary of Defense for Command, Control, Communications in evaluating all national and tactical programs. The IPSG has made giant strides in reducing redundancies, addressing shortfalls, and keeping this Committee informed of changes in policy and programming for tactical intelligence programs. Furthermore, the Committee is pleased with the level of detail provided in the revised TIARA budget justification books.

However, the Committee believes that the TIARA definition is unclear. For example, the Joint Surveillance Attack Radar System (JSTARS) is TIARA, the Advanced Warning Airborne Control System (AWACS) is not. When TIARA was originally defined, technology was not as advanced and programs were much simpler to define. Smart weapons, advanced sensors, and ground stations have made the distinction between intelligence and defense systems cloudy. The Committee supports DOD's ongoing review of the development of a common budget framework for DOD national and tactical intelligence activities. Furthermore, the Committee endorses the authorization language requiring an intelligence program review to be submitted with the fiscal year 1995 President's Budget Request.

AIR RECONNAISSANCE LOW AIRCRAFT

The Committee agrees with the House Armed Services Committee's recommendation to transfer the Air Reconnaissance Low Aircraft (ARL) from the DOD Counternarcotics program to the Army TIARA program. Therefore, the Committee recommends that all fiscal year 1994 funds are transfered to the Army TIARA program.

AIRBORNE RECONNAISSANCE

The Committee is concerned with the current shortfall in modern tactical airborne imagery reconnaissance systems. Current tactical airborne reconnaissance systems are film based with no near-real time downlink capabilities and have significant support costs. The Advanced Tactical Air Reconnaissance System (ATARS) attempted to fill the void. The ATARS sensor suite would replace film based sensors with electro-optical and infrared sensors providing near-real time imagery to ground processors.

Although the ATARS Program was plagued with technological and cost problems, the Air Force, the executive agent for ATARS, assured the Committee earlier this year that the ATARS program was viable. In July, the ATARS program was terminated by the Air Force due to schedule delays and estimates of high cost overruns.

The retirement of the Marine Corps' RF–4B, the limited capabilities of the Navy's F–14 Tactical Air Reconnaissance Pod System and the decreasing inventory of the Air Force's RF–4C aircraft, make the requirement for a modern tactical airborne imagery system crucial. The Committee is concerned by the inability of the Navy and Air Force to field a new generation tactical airborne imagery reconnaissance system despite congressional support over the past several years.

The Marine Corps has been the strongest advocate for a new imagery reconnaissance system and to date has depended on the Air Force and Navy to deliver a capable system. Therefore the Committee believes that the Marine Corps should receive the highest priority for the development and fielding of a new system.

The Committee recommends that all Air Force and Navy ATARS dollars in fiscal year 1994 be transferred to a defense-wide airborne reconnaissance line. These funds are to be used to correct the shortfalls in current airborne imagery reconnaissance systems. In addition, the Committee is encouraged by potential enhancements to tactical airborne reconnaissance capabilities as demonstrated by electro-optical sensor framing techniques, and therefore requests that $7,000,000 be used for the development and testing of an electro-optical sensor with framing capabilities.

The Committee directs the DOD to provide Congress, prior to conference, the costs incurred by the DOD to terminate the ATARS contract. No prior year ATARS funds may be obligated without prior approval from this Committee.

The Committee is aware that all hardware developed through the ATARS contract is now U.S. Government Property. The Committee believes that the available equipment should be provided to the Marine Corps for testing and evaluation. However, no new funds may be obligated for further development to the existing hardware without prior approval from this Committee.

NAVY MAPPING, CHARTING, AND GEODESY

The Navy requested $80,195,000 in Operations and Maintenance for mapping, charting and geodesy. The Committee recommends $71,195,000, a reduction of $9,000,000. This maintains the fiscal year 1993 spending level.

DISTRIBUTED SURVEILLANCE SYSTEM

The Navy has requested $135,879,000 for the Distributed Surveillance System. Although no reduction is recommended to the request, the Committee prohibits the obligation of more than $15,000,000 of the $33,387,000 requested for the Advanced Distributed System (ADS). Funds in excess of the $15,000,000 may not be obligated until the Navy has submitted a report to the Committee upon the completion of the Fixed Distributed Surveillance Systems-Deployable (FDS–D) sea trails. The Committee is concerned that the technologies being pursued in the ADS development effort are several years from being incorporated in any of the future naval surveillance platforms. Further the Committee believes FDS–D may serve as an acceptable baseline deployable system.

SPACE-BASED SURVEILLANCE

The Committee commends the thorough review of space-based sensor programs that the DOD is conducting as part of the fiscal year 1995 budget review process. However, since the review will not conclude prior to completion of the Committee's review of the fiscal year 1994 budget, and since any decision the Secretary makes will likely result in a reduction in the fiscal year 1994 funding requirement, the Committee has included a general reduction of $200,000,000 entitled "Space Surveillance" in Research, Development, Test, and Evaluation, Defensewide. It is the Committee's intent that this savings will result from restructuring of the Defense Support Program, Follow-On Early Warning System, and Brilliant Eyes programs.

In order to align the funds in accordance with the review results, the committee directs the Secretary of Defense to provide a full and complete disclosure of the review results and his recommendation prior to the conference committee. The Committee further directs DOD to obligate no fiscal year 1994 funds until the Congress appropriates funding for each specific system. This will preclude DOD expenditures in fiscal year 1994 from being inconsistent with the Secretary's review results and Congressional decisions for future sensor programs.

AIR FORCE TENCAP

The Air Force has requested $34,238,000 for Air Force Tactical Exploitation of National Capabilities Program (TENCAP). This is a $21,436,000 increase over the fiscal year 1993 enacted budget. Although the Committee applauds the Air Force's commitment to establish a credible program, the sizeable increase is not justified. The Air Force justified the 100% growth in Operation and Maintenance by increasing operations and support at the Space Applications Projects Office (SAPO). The Committee directs the Air Force to report to the Committee what added support the TENCAP office will provide to the tactical community before conference. The Committee also directs the Air Force to submit an Air Force TENCAP roadmap, justifying all of the proposed research and development contracts for fiscal year 1994 before conference. The Committee recommends $13,238,000 for Air Force TENCAP programs, a reduc-

tion of $21,000,000. This maintains the fiscal year 1993 appropriated level.

CLOSE AIR SUPPORT COMMUNICATIONS

Timely communications is critically important for tactical military operations involving close air support. The Army and the Air Force have cooperated in developing a common solution using the ARC-164 radio for UHF/Have Quick communications and the ARC-222 radio for VHF/SINCGARS communications. Each aircraft would then be able to communicate on both UHF and VHF and, additionally, to use one frequency channel to serve as a back-up in the event the other fails. The Navy, however, is proposing to develop its own unique ARC-210 communications system to provide both VHF and UHF in a single radio.

Since the joint Army and Air Force approach is much less expensive than the Navy proposal and also provides for commonality in operations, training, and logistics support, it is not clear why the Navy cannot use the same equipment. Consequently, the Assistant Secretary of Defense (C^3I) is directed to develop an independent analysis of the Navy close air support communications requirement. This analysis should compare the ARC-164/ARC-222 joint solution versus the ARC-210 Navy solution in terms of capability and cost—including development, unit, installation, and life cycle costs. The results of this analysis should be submitted no later than February 15, 1995.

COMMERCIAL SATELLITE COMMUNICATIONS INITIATIVE

The Committee is encouraged by the results of the Commercial Satellite Communications Initiative (CSCI) by the Defense Information Systems Agency (DISA) Military Satellite Communications Systems Office (MSO). The goal of the commercial implementation strategy is to build a commercial architecture to support short and long term communications requirements in a responsive and cost effective manner. Because of the potential for huge long-terms savings through expanded DOD usage of commercial communications technology and systems, the Committee has included an increase of $20,000,000 in Research, Development, Test and Evaluation, Defense-wide for the MSO at DISA to begin implementing pilot projects and cost savings identified through the Commercial Satellite Communications Initiative.

As a first step in recouping the savings which can result from the CSCI, recent results of a General Accounting Office review show that hundreds of millions of dollars can be saved by such simple actions as consolidating the acquisition of commercial satellite leasing in DOD. Currently, all DOD activities which lease commercial satellite communications are required to go through the Defense Commercial Communications Office (DECCO) for services. However, current practices are not sufficiently responsive to rapidly process user requirements. As a result, users go outside of DECCO to procure communications services in small quantities directly with commercial firms. Based upon the GAO review, the Committee believes that if DECCO were able to negotiate transponder leases and DISA were able to manage those transponders as a dedicated network, DOD user requirements could be better satis-

fied at a reduced cost. Therefore, the Committee directs that a portion of the $20,000,000 provided for CSCI will be used: (a) to develop and operate a MSO Commercial Network Simulator to determine the optimum transponder location and capacity for DECCO requirements, and (b) for the leasing of a transponder as a part of the Seed Network Project to ensure that user requirements continue to be met during the transition period. As the first installment of savings that are projected, the Committee has deleted a total of $100,000,000 from the operation and maintenance accounts.

The Defense Information Systems Agency is requested to provide a brief report on the implementation of the DECCO "bundling" initiative as well as the other proposed pilot projects to be funded with the additional resources being provided.

C³I ACQUISITION

Many C³I acquisition programs that are reaching production, were in the research and development stage during the Cold War. The reduced threat, shrinking budgets, declining personnel, and fewer requirements have impacted on the acquisition of C³I systems. Because of the environment, the actual quantities produced are often reduced from original acquisition plans. For some programs, such as the Army's Digital Topographic Support System, procurement is almost completed during the Low Rate Initial Production (LRIP) phase. Therefore, the Committee believes that in those instances that DOD can demonstrate that it is not economical to recompete contracts entering the production phase or switch from LRIP to full scale production, the DOD would not be required to recompete upon prior approval from Congress.

FORWARD AREA AIR DEFENSE GROUND BASED SENSOR

The Army requested no procurement funds for the Forward Area Air Defense Ground Based Sensor (FAAD–GBS). The Army's original acquisition strategy for the FAAD–GBS included $42,700,000 in fiscal year 1994 for the procurement of 8 systems. The Office of the Secretary of Defense terminated the FAAD–GBS funding during the budget process. Because the production schedule has slipped, the current contract must be renegotiated. Renegotiation will result in a cost increase of $1,000,000 per system. The Committee has learned that by providing funds for long lead items, the production line can remain open and the contract will be renegotiated at the original price. The Committee does not endorse the practice of long lead procurement items. The Army requested $25,800,000 for FAAD–GBS research and development. The Committee questions the strategy of concurrent development and production initiatives. The current system was selected in a Non-Developmental Item (NDI) competition. The Committee questions the need for research and development funds for a NDI system that has reached production. Therefore, the Committee recommends $42,700,000 for FAAD–GBS procurement. However, the Committee directs that the cost of each system is not to exceed the $5,100,000 negotiated in the original contract. The Committee deletes all research and development funds for this program.

C^{4}I FOR THE WARRIOR

C^{4}I for the Warrior Program is a Joint Chiefs of Staff initiative to improve interoperability of command and control systems among the Services to support Joint Task Force operations. The Committee understands that the Naval Electronic Systems Engineering Activity at St. Inigoes participated in the Warrior Quick Fix Phase with the Joint Universal Data Interpreter (JUDI) System. The Committee believes that the JUDI solution should be explored for applications to link and create interoperability among other DOD assets and facilities to improve simulation training and system developmental efforts. The Committee directs that within appropriated funds, the Navy is to provide no less than $4,000,000 to initiate this effort at St. Inigoes.

DOD ENVIRONMENTAL SECURITY PROGRAMS

OVERVIEW

The President's budget request for fiscal year 1994 for DOD environmental security programs totalled $5,185,000,000. This included $10,000,000 for the Legacy Resource Management Program, $100,000,000 for the SERDP program, $282,000,000 for the Base Realignment and Closure sites, $2,309,000,000 for site cleanup, and $2,484,000,000 for environmental compliance. This is a 273% increase in requested funding since fiscal year 1990.

In the past, the Committee has been frustrated with this tremendous growth in requested funding, considering how little land has actually been restored to date. However, the Committee is pleased with the new Administration's efforts to place a high priority on environmental protection. Specifically, the Committee supports the new Deputy Undersecretary of Defense for Environmental Security's belief that the Defense Department could cut costs and shorten cleanup times if the intended future use of polluted sites were matched to the cleanup effort. Thus, a polluted site on a military base that is going to close and be converted into an industrial park need not be cleaned as thoroughly as a site intended for a housing development. The Committee expects to see this new belief translate into reduced future budget requests. For fiscal year 1994, the Committee recommends a $600,000,000 reduction.

PENN MINE SITE, CALIFORNIA CLEANUP

The Committee notes that a number of mine sites exist that since the late 1800s supported the Nation's war efforts by supplying strategic minerals and which were operated under directives from the federal government. Many of these sites are abandoned. It has been demonstrated that these sites generate acid mine drainage that pose threats to the environment. The Committee directs the Secretary to undertake a cleanup program at the Penn Mine site located in Calaveras County, California. This is intended to build upon the existing efforts made to date at the Penn Mine site so that a national model can be developed for use at other similar sites. The Committee further directs the Secretary to coordinate all cleanup efforts with the United States Environmental Protection Agency, and the State of California and other participat-

ing public agencies and to ensure that any selected cleanup program complies with state and federal environmental mandates and is consistent with ongoing emergency actions. The Committee directs that up to $50 million be used for this cleanup. The Committee directs that fiscal year 1994 cleanup activities shall include, at a minimum, design and implementation of treatment systems for impounded water, runoff, and acid seepage and leachate and the design and implementation of other site remediation efforts deemed appropriate by the Secretary after consultation with the Environmental Protection Agency, the State of California, and other participation public agencies. This cleanup action shall be undertaken pursuant to and consistent with Section 319 of the Clean Water Act, and all other relevant and appropriate sections of the Clean Water Act, and CERCLA. It is the intent of this Committee to ensure that neither the State of California nor any other participating public agency shall be held liable or responsible for the cost of the cleanup of the site or for any claims of damages resulting from existing efforts made to date or from future efforts undertaken pursuant to this report. Within 180 days of enactment, the Secretary shall report to the Committee on Appropriations and the Committee on Armed Services his plans to implement remedial actions at the site including milestones for cleanup.

HAMILTON AIR FORCE BASE CLEANUP

The Committee recommends continuing bill language to support and resolve environmental restoration and land transfer issues at Hamilton Air Force Base, California.

The purpose of this language is to appropriate the additional funds necessary for the cleanup of hazardous waste contamination at Hamilton Air Force Base, Novato, California. The Committee is pleased that the Department of the Army is using the cooperative agreement authority granted in PL 102–396, Sec. 9099, paragraphs g, h, i, to execute the cleanup of hazardous materials. The Committee has encouraged the Army to use this authority and fully supports this innovative approach for accomplishing the remediation of real property at a closed military installation. It is the Committee's intent to examine the economic efficiencies of this and other approaches as a possible model for other cleanups. The Committee understands that this approach has already resulted in cost savings of approximately $2.5 million.

This legislation also provides for the transfer of a portion of the sale parcel to the local community for specified public uses consistent with the existing public benefit transfer programs. It is the Committee's intent that, if the city conveys portions of the property to third parties, the net profits from such transfers shall be recovered by the Army.

OTTUMWA INDUSTRIAL AIRPORT

The Committee directs the Department to work with the Army Corps of Engineers and the City of Ottumwa, Iowa, in fiscal year 1994 to undertake the removal of asbestos from two buildings and demolition of obsolete buildings at the Ottumwa Industrial Airport, which was a United States Navy training base during World War II.

VIGO COUNTY, INDIANA CLEANUP

The Committee directs the Army Corps of Engineers to initiate and complete a building demolition and debris removal project on a former chemical warfare site near Terre Haute, Indiana, as recommended in its fiscal year 1994 workplan.

BEALE AIR FORCE BASE CLEANUP

The Committee has recommended an increase of $2,800,000 to be used only for the cleanup of two abandoned missile sites (Titan 1 Missile Complex No. 1B and Titan I–C) located at Beale Air Force Base in Northern California. Due to the substantial risk to public safety posed by these sites, the Committee believes the Department should fund these projects in fiscal year 1994, and not defer this cleanup because of lack of resources.

FORMER STEAD AIR FORCE BASE CLEANUP

The Committee directs the United States Corps of Engineers to expedite an environmental restoration project to a former U.S. Air Force Base in Stoad, Nevada, and to ensure that restoration of this site is included in its fiscal year 1994 workplan.

In addition, the Committee directs the United States Army Corps of Engineers to expedite preparation of an interim agreement addressing investigative and remedial activities required at the former Stead Air Force Base site. The Committee further directs the U.S. Army Corps of Engineers to provide funding through this agreement based upon an allocation percentage derived from the partial information now available and to begin remediation immediately upon availability of funds and to review and reallocate funds upon completion of all investigative and remedial activities at the site.

CASTNER RANGE CLEANUP

The Committee has recommended an increase of $4,600,000 to be used only for surface decontamination of Castner Range at Fort Bliss, Texas.

OLMSTED AIR FORCE BASE RESTORATION PROJECT

The Committee is pleased that the Army Corps of Engineers has begun Phase I of a restoration project at the former site of Olmsted Air Force Base involving removal of underground storage tanks, pipelines, PCB-contaminated transformers and contaminated soils associated with these structures. The Committee is aware that Phase II contracting is now in progress. The Committee continues to support this project and directs its complete implementation.

The Air Force emphasis on comprehensive and Record of Decision-related environmental testing will expedite the time-frame in which the site may be considered by the Environmental Protection Agency (EPA) for delisting, possibly as soon as during the next fiscal year. In anticipation of the final actions that must be undertaken by the Air Force to promote delisting by EPA of the economically critical area, the Committee has recommended that $5,000,000 be made available in Title II, Operation and Maintenance, Air Force appropriation, for any necessary action on Phase

II remediation projects, Defense Environmental Restoration Program (DERP) Formerly Used Defense Sites (FUDS) eligible projects, or any matter related to past Air Force use that will result in expedited remediation and subsequent delisting by EPA of Olmsted as a superfund site.

ENVIRONMENTAL REMEDIAL TECHNOLOGICAL DEMONSTRATION

The Committee has observed the continued expansion of the size and scope of the remediation required of current and former defense sites which are contaminated with buried, unexploded ordnance (UXO) and hazardous, toxic and radiological waste (HTRW). Safety-related issues surrounding Formerly Utilized Defense Sites (FUDS), Base Realignment and Closure (BRAC) and Installation Remediation Program (IRP) sites are matters of increasing public concern.

The equipment and procedures currently deployed for the detection and location of UXO and HTRW are antiquated, manpower-intensive, and of questionable validity. Remediation efforts are hampered or exacerbated by unreliable, incomplete or non-existent records. Additionally, there are no acceptable standards for the detection of UXO and HTRW and for the collection, storage and treatment of data. In the absence of adequate information, Department of Defense (DOD) cost estimates for remediation are often based upon budgetary considerations rather than actual projected clean-up costs.

The Committee is aware of improved and existing systems appropriate to the investigation of potentially contaminated sites and is concerned about the status of site investigation standards. The Committee directs the DOD to establish site investigation standards for the detection of UXO and HTRW, the storage and processing of data; and to qualify, through not less than four site demonstrations, a candidate system and procedures. The appropriate system should be selected from those which are existing, mature, commercially available from the private sector, and suitable for immediate deployment upon technical acceptance. The selected system should incorporate (1) the collection of quantitative, archivable data available for independent analysis and future retrieval; (2) rapid, wide-area surveillance; (3) precise target location including depth and size; (4) quality assurance; (5) computer-aided real time data processing; (6) maintenance of safety standards; and (7) cost effectiveness.

Four demonstration sites, selected from IRP, FUDS and BRAC sites, should be selected in coordination with the Committee for investigation during Fiscal Year 1994. To establish technical maturity and equipment robustness, individual demonstration sites should be 300–500 acres in size. Following investigation of the four sites, a representative recovery of targets should be conducted to definitively establish the effectiveness of the candidate system. Site investigation methods should collect data to the greatest depth and accuracy allowable. Based upon technical performance, the DOD should establish revised standards for future site investigation and remediation work. The collection of survey data should be designed to facilitate long-term storage for future re-analysis should land-use requirements change. It is the intent of the Committee to dem-

onstrate and rapidly deploy equipment and procedures known to exist.

INFORMATION TECHNOLOGY (IT) RESOURCES

OVERVIEW

The Department's information technology budget request for fiscal year 1994 is $9,491,000,000, a reduction of almost $400,000,000 from the fiscal year 1992 level of effort. The Committee has long supported the Department in its elimination of duplicative information systems through budget hearings, meetings with key technology officials, and congressional inquiries. The Committee has tried to be patient in order to allow the Department's Corporate Information Management (CIM) initiative an opportunity to achieve results and projected savings.

However, at the same time, DOD must move carefully in eliminating information systems and associated development, operations, maintenance and procurements, to make sure that the remaining systems can carry the full workload and satisfy the needs of all components of the DOD. While the Committee continues to support the CIM initiative, it believes that tighter controls need to be implemented to achieve projected savings. Because the Committee would like to give the new Administration time in establishing its automation policies, it has not agreed to the general automated data processing reductions as proposed by the House Armed Services Committee.

However, the Committee recommends a general reduction to the Service's information technology resources as follows in order to transfer this funding to the Department's Corporate Information Management account to continue to improve efficiency and end duplication of functions and automated information management systems:

Army	−$25,000,000
Navy	−25,000,000
Air Force	−25,000,000
Defense Agencies (Corporate Information Management)	+75,000,000
Total	0

These reductions will not be allocated to the Reserve Component Automation System (RCAS).

RESERVE COMPONENT AUTOMATION SYSTEM (RCAS)

The Committee is pleased with the remarkable progress the Army has made to develop a computer system for its reserve forces, despite technological challenges and programmatic disruptions. The Committee directs the Army to fund accelerated deployment in future budget requests in order to field this critical system expeditiously.

In addition, the Army will henceforth provide the necessary funding for RCAS testing the same as it does for active component programs.

The Committee is discouraged with the Army's unsatisfactory performance in data element standardization. Because of this, RCAS Block 1 software is being built with non-standardized data

elements. If those elements are not subsequently approved by the Army, the Committee directs that additional costs will be borne only by the Army for their replacement. The Committee expects the Army to correct this situation immediately by funding and expediting the data element standardization program so that taxpayers do not have to pay for this problem.

The Committee directs that RCAS, in fulfilling its role as the single, integrated, multi-level secure, multi-functional system, will subsume the Reserve Component functionality requirements of FORSCOM Information System (FIS), the Standard Installation Division Personnel System (SIDPERS–USAR and SIDPERS–ARNG), the USARC Headquarters system, the Center Level Application System (CLAS), the Army Reserve Center (ARPERCEN), and the National Guard Bureau Systems. This will not only produce maximum effectiveness in all areas and at all levels of management at minimum cost initially, but will also facilitate more economical modular upgrades and technology insertions in the years to come.

To ensure that there is sufficient planning and preparation for an orderly transition from these systems to RCAS, the Committee directs the Assistant Secretary of Defense (Reserve Affairs) to provide a report to the Committee on Appropriations of the House and Senate no later than April 15, 1994. Preparation of this report will require the active cooperation and timely participation of the Chiefs of the respective Army Reserve Components, the Commander of Forces Command, and the Commander of the Army Personnel Information Systems Command. The Chief of the National Guard Bureau will interact with the cognizant commanders to establish Army funding requirements and a phased plan of execution which is coordinated and compatible with the RCAS baseline schedule.

The Committee has again included a general provision on RCAS to ensure that progress continues on this important automation effort.

In addition, Congress established a moratorium on the networking and expansion of existing or future Army Reserve Component information systems and the acquisition of additional ADP equipment, to avoid unnecessary duplication and waste while RCAS was being developed and deployed. Contrary to the clear intent of Congress, and without the prescribed prior notification, several such systems have violated the moratorium.

Therefore, the Committee recommends a provision setting forth the criteria to be satisfied before additional or replacement computer equipment can be acquired. Basically the policy stipulates that units that presently have no computer may be provided with an appropriately configured RCAS computer for stand-alone office automation. Justification for replacement equipment is not to be based on obsolescence but on the cost and feasibility of repairs and maintenance of present ADP equipment, in relation to the cost for replacement. Requests, with a detailed justification, are to be submitted via the chain-of-command and the Chief of the National Guard Bureau to the Assistant Secretary of Defense (ASD) for Reserve Affairs who is the Functional Proponent (FP) in the Department of Defense. If recommended by the Chief of the respective Re-

serve Component and the Chief of the National Guard Bureau, and approved by the FP, the requesting activity may transfer the necessary funds to the RCAS PM who will then execute the procurement under the RCAS contract.

COMPOSITE HEALTH CARE SYSTEM (CHCS)

The Committee continues to support the Department's efforts to automate all military hospitals with CHCS. Three independent benefit analyses conducted on CHCS reported that for the life cycle investment of $1,600,000,000, the benefits that DOD would realize in savings would be $2,660,000,000. Approximately 85% of these savings are attributable to the functionality provided by the outpatient system capabilities which are now being fielded.

The Committee is concerned, however, about the other 15% of savings attributable to inpatient order entry, which equates to approximately $400,000,000, which the Department does not seem to be pursuing for financial reasons. Therefore, the Committee recommends an increase of $20,000,000 in fiscal year 1994 to continue the development of the inpatient order entry module of CHCS. The Department should fund the continued development of this module in future budget submissions in order to realize the total projected savings. The Committee has also recommended the deletion of the CHCS funding cap in order to allow the Department to expand applications for a more cost efficient system.

Another area of concern has been the Department's reluctance to integrate into undeveloped applications state-of-the-art technologies from existing vendors. The fiscal year 1993 Defense Appropriations Conference Report directed the Department to encourage such subcontracting. To date, the Committee is aware of no instances where technologies from existing commercial vendors have been integrated and has, therefore, included $10,000,000 and specific language directing the Department to make greater use of commercial, off-the-shelf (COTS) applications, and directing the specific integration of anatomic pathology and blood bank applications, as discussed below.

BLOOD BANK AND BLOOD DONOR INFORMATION SYSTEM

The Committee is aware that the Department has spent years and considerable resources developing their Defense Blood Standard System (DBSS) but is concerned with plans for extensive deployment without adequately considering the capabilities of those blood systems available and operating in the civilian sector. With tremendous interest in the safety of the existing daily use of blood and blood products in the Department's medical facilities and concern for the adequacy of the DBSS, the Committee has included language in a general provision directing procurement (by April 1, 1994) and testing of a commercial, off-the-shelf (COTS) blood bank/transfusion product. The Committee also directs a concurrent independent cost and operational effectiveness analysis and comparison of the COTS solution with the Department's in-house developed product through the Institute for Defense Analysis. The Committee requests that the results of this study be provided to the Committee by September 30, 1994.

ANATOMIC PATHOLOGY

The Committee recommends a revision to a general provision to provide specific direction to procure and install a COTS anatomic pathology application consistent with CHCS technologies, which will assist the Department's efforts under their Clinical Laboratory Improvement Program, at all alpha and beta CHCS test sites not later than September 1, 1994.

INTEGRATED FINANCIAL MANAGEMENT INFORMATION SYSTEM

The Committee is pleased with the Department's decision to conduct a detailed review of the Defense Business Operations Fund (DBOF) and its supporting automation systems. One system that the Committee has received positive information on is the Integrated Financial Management Information System (IFMIS). IFMIS is a commercial, off-the-shelf product that can save the Department time and money, meets users' needs, and is a single product covering all financial areas. The Committee requests that the Department review the integration of IFMIS into its future financial operations during its review of DBOF and report to the Committee its findings.

TICARRS

In the fiscal year 1992 Defense Appropriations Conference Report, the conferees expressed concern about the ability of the Core Automated Maintenance System (CAMS) and the Reliability and Maintainability Information System (REMIS) to provide timely, accurate and comprehensive data to Air Force systems managers. Consequently, the conferees directed the General Accounting Office (GAO) to make an independent assessment of these two systems.

GAO's evaluation revealed serious software deficiencies in CAMS and REMIS. Subsequently, a Department of Defense Major Information System Review Council also uncovered significant deficiencies in the ability of these systems to deliver timely and accurate data.

Aware that the Air Force intended to proceed with its fielding plan for CAMS and REMIS, irrespective of these findings, this Committee included provisions in the fiscal year 1993 Defense Appropriations Bill, and accompanying report, directing that until an independent assessment of the three systems was completed, TICARRS would be: (1) maintained in support of all F-117A aircraft and (2) reestablished as the maintenance management system for all F-15 and F-16 aircraft. The intent of this provision was to preclude the Air Force from depriving operations, maintenance, supply and systems program management organizations of systems that work, while the Air Force tied to correct the defects in management information systems that were unable to provide timely, accurate and comprehensive data and information. This legislation was passed by the House in June 1992. Nevertheless, in August 1992, signaling its intent not to comply, the Air Force replaced TICARRS with CAMS as the supporting system for the F-117A aircraft. Concerned that air crew safety might be endangered by the premature fielding of systems that apparently did not work

very well, the Appropriations conferees included a nearly identical provision in the 1993 Defense Appropriations Act.

The Air Force chose not to fully comply with the fiscal year 1993 Appropriations mandate to reestablish TICARRS in support of F-15, F-16 and F-117A aircraft. Therefore, the Committee recommends a new provision for fiscal year 1994 that directs the Air Force to reestablish TICARRS in support of one wing each of those aircraft by January 1, 1994, and for TICARRS to be reestablished on all F-15, F-16 and F-117A aircraft no later than March 1, 1994.

The Committee further directs that the Department of Defense's Inspector General determine whether the Air Force or other Defense Department personnel have violated any provision of the Antideficiency Act in regard to any obligation of funds to operate, maintain or otherwise support TICARRS, CAMS and REMIS. The Inspector General's findings should be submitted to the Committees on Appropriations not later than December 1, 1993.

STANDARDIZATION OF MAINTENANCE SYSTEM APPLICATIONS

The Army was tasked in a Program Decision Memorandum, entitled "Army Maintenance Information System", (September 18, 1992), to implement a Smart Data System (SDS). Subsequently, the Army was directed to fund a concept demonstration for presentation to the Undersecretary of Defense for Acquisition on April 1, 1993. However, the Committee has been informed that no action has been taken by the Army.

DEFENSE CONVERSION

In fiscal year 1993, the Congress appropriated $1,767,010,000 to the Department of Defense for defense conversion programs that generally fall into the broad categories of personnel assistance, community adjustment and assistance, and technology investments. In fiscal year 1994, the Defense Department requested $2,341,900,000 to continue these programs. The Committee conducted a hearing this year on the status of the 1993 funds and the need for continued funding in 1994. The Committee is pleased with the effort made by many organizations in the Defense Department to organize and initiate these programs in a very compressed timeframe. The Committee commends in particular the Advanced Research Projects Agency (ARPA) and the Office of Economic Adjustment for their leadership and eagerness to make these programs successful. The Committee believes that ARPA's management of the Technology Reinvestment Program is masterful, in terms of the strategy employed, the clarity and frequency of communications with industry, and the speed at which the program moved from inception to inviting bids for proposal.

The Committee recommends a total of $3,231,025,000 for defense conversion for fiscal year 1994. This amount includes funds in the following appropriations: Military Personnel; Operation and Maintenance; Research, Development, Test and Evaluation; Procurement, Defense-wide; and Shipbuilding and Conversion, Navy. The table below compares the President's budget request, the House Armed Services Committee's recommendation, and the Committee's

recommendation for each conversion or related program identified by the Department in its budget request:

FISCAL YEAR 1994 DEFENSE CONVERSION FUNDING

[In thousands of dollars]

Program	Budget	HASC	Recommended
PERSONNEL ASSISTANCE PROGRAMS			
Temporary Early Retirement	$319,000	$319,000	$319,000
Temporary Health Transition Assistance	12,000	0	12,000
Guard and Reserve Transition Initiatives	50,000	0	50,000
Separation Pay and Civilian Health Benefits	100,000	100,000	100,000
DOD Environmental Scholarship/Grant Program	7,000	0	0
Occupational Conversion and Training	0	25,000	0
Transition Assistance/Relocation Assistance	67,000	67,000	67,000
Subtotal	555,000	511,000	548,000
COMMUNITY ADJUSTMENT AND ASSISTANCE PROGRAMS			
Office of Economic Adjustment	29,000	70,000	70,000
Junior ROTC Expansion	73,000	73,000	73,000
Law Enforcement and Health Care Provider Training	0	(10,000)	50,000
Congressional Initiatives	0	0	189,925
Subtotal	138,000	143,000	382,925
TECHNOLOGY INVESTMENTS			
Dual Use Technologies:			
Technology Reinvestment Project	275,000	575,000	575,000
Other Technology Partnerships	49,000	49,000	49,000
Subtotal	324,000	624,000	624,000
Other Initiatives:			
Intelligence Systems/Software	68,800	68,000	68,800
High Performance Computing	237,900	225,900	137,900
Software Engineering	39,100	39,100	39,100
SEMATECH	90,000	90,000	90,000
Other Microelectronics Manufacturing	10,000	10,000	10,000
Advanced Simulation	54,000	54,000	54,000
High Definition Systems	57,200	125,000	125,000
Materials and Electronics Technology	198,500	276,200	289,700
Advanced Lithography	47,500	75,000	75,000
Other Electronics Manufacturing	237,900	228,000	237,900
Defense Research Sciences	79,700	79,700	79,700
Software Technology Initiative	43,300	43,300	0
Small Business Innovative Research	161,000	161,000	161,000
Neutron Generators, Components, and Associated Equipment	0	0	8,000
Subtotal	1,324,900	1,476,000	1,376,100
Shipbuilding Initiative	0	300,000	300,000
Subtotal	1,648,900	2,400,000	2,300,100
Grand total	2,341,900	3,054,000	3,231,025

The Committee recommends that the following conversion projects be funded in the Operation and Maintenance, Defense-wide appropriation. DD Form 1414 shall show them as items of special Congressional interest, a funding decrease to which requires prior Congressional approval:

Southeastern Pennsylvania Consortium for Information Technology and Training	$3,500,000
Western Michigan University School of Aviation Sciences/Fort Custer Industrial Park	6,000,000

Illinois Vietnam Veterans Leadership Program	125,000
Monterey Institute Center for International Trade at Fort Ord	9,000,000
California State University system at Fort Ord	25,000,000
Renovation of the State Pier at New London, Connecticut	14,900,000
Conversion of Homestead AFB	10,500,000
Miami Dade Community College at Homestead AFB	15,400,000
California Statewide Economic Development Network	12,500,000
San Diego State University Center on Defense Conversion	7,000,000
San Francisco State University California Economic Recovery and Environmental Restoration Project	3,000,000
Hampton University/Hughes Aircraft Aeroscience Institute	15,000,000
Model Veterans Training and Employment Program	10,000,000
Rand Study on Downsizing and Immigration	1,000,000
Personnel training in law enforcement and health care professions	50,000,000
Mare Island and Charleston Shipyard Conversion/Reuse Studies	2,000,000
Worker Retraining for Environmental Restoration at Mare Island, California	10,000,000
Section 1333 Grants for Worker Retraining for Environmental Restoration	[1] 10,000,000
Personnel Transition Assistance	15,000,000
Displaced personnel retraining in gerontology	10,000,000
Demolition and environmental cleanup of Century Brass Products' dormant factory in Waterbury, Connecticut	20,000,000
Total O&M	239,925,000

[1] The Committee supports the House Armed Services Committee recommendation contained in Section 1333 to fund this project from prior year unobligated balances.

The Committee recommends that the following conversion projects be funded in the Research, Development, Test and Evaluation, Defense-wide appropriation in the Dual Use Technologies program element. DD Form 1414 shall show them as items of special Congressional interest, a funding decrease to which requires prior Congressional approval:

CFC Free Refrigeration Technology Project	$800,000
Demonstration of Shipboard Material Handling Systems at Port Arthur, Texas	2,000,000
American Center for Education in Plastics and Rubber Technologies	12,500,000
Drew Medicine and Science Health Occupations Retraining Demonstration Project	2,000,000
Midwest Regional Centers for Advanced Technology Development	20,000,000
Far West Regional Office Technology Transfer Project	316,000
Renewable Electric and Renewable Thermal Utility Demonstration Projects	25,000,000
Ocean Thermal Power Plantships Technology Project	8,000,000
St. Louis Manufacturing Extension Program	1,000,000
Center for Photochemical Sciences Stereolithography Technology Program at Bolling Green University	5,000,000
Center for Advanced Control Systems Technology Project	10,000,000
Queens Hall of Science's "Discovery Lab" Project	10,000,000
Lahey Clinic Ambulatory Surgical Research Project	3,000,000
New York Regional Manufacturing and Engineering Center	5,000,000
Miami Health Technologies Science Center Defense Reinvestment Project	3,000,000
Tucson Defense Conversion Project	900,000
Joint Arizona Center for Manufacturing and Training (JACMET)	1,500,000
Curved Plate Technology Project in Norfolk, Virginia	60,000,000
Joint Army Ammunition Plant Transfer Project	75,000
Southeast Health Professional Training Center at Mt. Sinai Medical Center of Miami, Florida	3,000,000
High Technology Center of Rochester, New York	6,000,000
Magnetically Levitated Transportation prototype test track	22,000,000
USF/DOE Pinellas Technology Deployment Center	20,000,000
Device Independent Multi-Media Universal Interface System for Medical Information Management	1,400,000

Ben Franklin Partnership and Industrial Resource Center	14,000,000
Total R&D	236,491,000

The Committee recommends that the following conversion project be funded in the Procurement, Defense-wide appropriation. DD Form 1414 shall show it as an item of special Congressional interest, a funding decrease to which requires prior Congressional approval.

Pinellas DOE plant equipment	$8,000,000

Details on some of the projects listed above follows:

PERSONNEL TRANSITION ASSISTANCE FOR THE ENHANCEMENT OF SOCIAL SERVICES IN COMMUNITIES AFFECTED BY MULTIPLE INSTALLATION CLOSURES

Several communities affected by multiple base closures have reported to this Committee that their current level of social services are not adequate to provide for the increasing number of people requesting assistance resulting from the closure. Such social services include but are not limited to mental health, substance abuse, and child care assistance programs. The Committee is concerned that such communities, already financially weakened by the closing of military installations in their area, will not be able to provide the necessary pre- and post-closure social services that will directly benefit affected communities' ability to accomplish the transition from a military to a civilian economy. The Committee recommends $15,000,000 in the Operation and Maintenance, Defense-wide appropriation.

ILLINOIS VIETNAM VETERANS LEADERSHIP PROGRAM

The Committee recommends $125,000 in Operation and Maintenance, Defense-wide for the Illinois Vietnam Veterans Leadership Program (IVVLP) in Chicago, Illinois. This organization has provided support and addressed the needs of many Illinois veterans since 1983. This funding will be used for career counseling and employment assistance at IVVLP offices in Chicago, Springfield, and Bellville, Illinois to help discharged veterans transition into the community upon release from the military.

CONVERSION OF THE PHILADELPHIA NAVAL SHIPYARD

The Committee directs the Department of Defense to establish a National Maritime and Industrial Center at the Philadelphia Naval Shipyard. The intent of this project is to show the viability of converting a military industrial facility to a public-private venture which can compete for Navy work, as well as commercial industrial activities. In order to make this public-private venture a reality, the Committee recommends that the Department of Defense:

1. Allow the Philadelphia Naval Shipyard to bid without prejudice on all government and commercial work;
2. Preserve effective work levels to allow the workers to transition directly into other jobs at the Shipyard;
3. Consider performing the conversion of the U.S.S. Inchon to a mine countermeasures support ship at the Philadelphia Naval Shipyard due to its unique strengths and capabilities;

4. Commence negotiations with the City of Philadelphia relating to all aspects of enabling the Shipyard to make a transition to a public-private venture, including but not limited to: (a) use of all Yard facilities, including but not limited to the drydocks and machine shops; (b) strategies for governing the public-private venture; and (c) compensating employees and other issues; and

5. Create a National Maritime Center—Prototype Manufacturing Center as envisioned in the National Shipbuilding Initiative at the Yard complex. Such a center's activities would include: research, development, and prototyping of new ship designs, ship systems, and maritime industrial processes. The Center would utilize existing facilities and shipyard workers.

MODEL VETERANS TRAINING AND EMPLOYMENT DEMONSTRATION PROGRAM

The Committee recommends $10,0000,000 in Operation and maintenance, Defense-wide for the Model Veterans Training and Employment Demonstration Program. The demonstration program shall focus on the recruitment, counseling, training and job placement of discharged military personnel and other veterans seeking employment opportunities in the construction and hazardous waste remediation industries. Funds shall be provided to non-profit veterans organizations and construction industry labor-management.

RAND STUDY ON DOWNSIZING AND IMMIGRATION

The Committee is very concerned about the serious effects that defense industrial declines, base closures and immigration may have had on the economies, labor forces and social services of various localities where all three trends have been concentrated, particularly in many regions of California. However, little is known about the nature of the interactions of these three trends and what options are available to: (1) alleviate the negative consequences of the trends; (2) provide for less hardship during downsizing; and (3) prepare the path for new economic growth. For these reasons, the Committee directs that RAND undertake a study of these issues in California and provide an interim report of its findings and conclusions to the Appropriations Committees of Congress by May 1, 1994. The Committee has provided $1,000,000 in the Operation and Maintenance, Defense-wide appropriation for this purpose.

DISPLACED PERSONNEL TRAINING IN GERONTOLOGY

Base closures and defense-conversion initiatives have adversely impacted communities, especially minority communities in Southern California. There is also a need for trained individuals in the health and gerontology fields to meet the increasing demand of a growing population of older persons. The Committee recommends $10,000,000 only to provide a direct and unrestricted grant to a non-profit charitable foundation to support an institute dedicated to making advances in applied gerontology for caregivers and practitioners in health education and social service programs for the elderly located at an institution of higher education serving the needs of minority students in Los Angeles and to assist in the

training of individuals in health and related fields, to improve services and programs to Hispanic and other minority communities in East Los Angeles, California. The Committee intends the grant to provide scholarships and educational and training opportunities in gerontology for individuals adversely affected by personnel reductions in the Department of Defense and defense-related industries.

PINELLAS DOE PLANT EQUIPMENT

The Committee is aware and supportive of the Department of Energy plan to consolidate its non-nuclear complex and to convert three of its remaining facilities to plants capable of dual use technology. One of those facilities at Pinellas is the only current U.S. producer of neutron generators which are a key component of every nuclear weapon produced and maintained for the Department of Defense. While supportive of the DOE plan, the Committee is concerned that it will leave at least a four year gap in the nation's ability to produce these components. Further, these items have direct commercial applications, many of which are of interest to the Federal government: medical diagnosis, drug interdiction, and explosives identification. Removal of the plant equipment will prevent commercialization of these key technologies, result in the additional loss of jobs, and further erode our industrial base. Therefore, the Committee recommends $8,000,000 in the Procurement, Defense-wide appropriation only to purchase equipment for the Pinellas facility which will pormit continued production of commercial grade neutron generators, other components, and associated equipment.

QUEENS HALL OF SCIENCE

The Department of Defense is planning to expand the highly successful Junior Reserve Officer Training (JROTC) program by more than doubling the number of JROTC units by 1997. The Committee believes that as part of this expansion, DOD should provide $10,000,000 in funding for the establishment of a JROTC Science Center collocated at the New York Hall of Science in Queens, New York. In addition to fostering a sense of order and discipline in many at-risk youth around the nation, JROTC programs are also a valuable recruiting tool. Almost 65 percent of JROTC graduates join the military. Since the modern military demands quality individuals at every level who possess a strong background in basic scientific principles to effectively utilize sophisticated weapons and machinery, the Committee believes that establishing a JROTC Science Center, in conjunction with one of the most innovative science centers in the nation, would enable the JROTC program to provide the appropriate emphasis on science and engineering at this time when demands for skills in those areas in the military are increasing markedly. Location at this particular site would provide access to the facility to a number of local JROTC units and ready access to air and rail transportation would enable the facility to be utilized by JROTC units from across the nation. The Committee recommends $10,000,000 in the Research, Development, Test and Evaluation, Defense-wide appropriation only for this purpose.

MAGNETICALLY LEVITATED TRANSPORTATION PROJECT

The Committee recommends $22,000,000 in the Research, Development, Test and Evaluation, Defense-wide for magnetically levitated transportation for military applications with commercial dual use potential.

PINELLAS TECHNOLOGY DEPLOYMENT CENTER

The Administration has launched a major national initiative to provide technology transfer from taxpayer-built and supported high-technology facilities to the surrounding communities, assisting emerging and established businesses to become more globally competitive. The Committee supports the Administration's efforts and has identified the Department of Energy Pinellas Plant as an excellent site for defense conversion. The Pinellas plant has established strong working relationships with its surrounding community through economic development councils and municipality involvement and by working closely with the State University System via the University of South Florida. The Committee directs the Secretary of Defense to transfer $20,000,000 of Research Development, Test and Evaluation, Defense-wide defense conversion funds to the Department of Energy to effect the transition from defense to commercial related business activities at the DOE Pinellas plant.

CALSTART

The Committee is aware of the CALSTART project under ARPA's Technology Reinvestment Program and recognizes its potential for assisting in the creation of a new advanced transportation industry involving alternative clean fuel vehicles and the improvement of this country's competitiveness. The Committee notes that the project is currently receiving funding assistance from the Department and is pleased to see these types of projects supported by the Department.

AGILE MANUFACTURING

The Committee recommends that $44,000,000 of the funds within the amount budgeted for Dual Use Technologies by applied only to agile manufacturing.

SELLING WEAPONS OVERSEAS

The Committee believes that conversion funds should not be used by Defense contractors to create leverage for selling weapons overseas.

SUBMARINE INDUSTRIAL BASE

In the recently announced Bottom-Up Review, the Department of Defense has proposed to sustain an industrial base for submarine construction by taking the following steps:

(1) Designating the Electric Boat facility in Groton, Connecticut as the future submarine production facility, in so doing maintaining two nuclear-capable construction shipyards (the other being the Newport News facility in Norfolk, Virginia);

(2) Continuing development of a New Attack Submarine which is to enter production at the end of the decade; and

(3) Constructing a third SSN–21 Seawolf submarine as a "production bridge" pending production of the New Attack Submarine, reversing the previous Administration's plan to cease Seawolf production after two ships.

The Committee notes that implementation of these proposals is dependent on future defense budget submissions and does not require adjustments to the fiscal year 1994 budget request. However, the Committee is concerned about several aspects of the Department's plan which it believes must be fully examined before consideration of the fiscal year 1995 budget.

For example, under planned force structure reductions the Navy's attack submarine inventory will decline from over 80 today to between 45–55, requiring the early decommissioning of SSN–688 class submarines which the Secretary of Defense has conceded are clearly technologically superior to any current or projected threat. Yet at the same time the Navy is prematurely retiring these assets, it proposes to proceed with production of another Seawolf and continue development of a new generation of attack submarines.

With respect to Seawolf, the Committee need not repeat the litany of cost increases and schedule delays which have plagued the program since its inception. These problems have yet to be resolved with respect to the two submarines currently being built, as evidenced by an August 1993 GAO report detailing cost increases of over $200 million over the past 20 months. Latest estimates indicate the Navy will require at least an additional $330 million beyond that already appropriated to complete these submarines.

The Secretary of Defense has advised the Committee that his proposal to procure a third Seawolf is not based on operational or threat-based requirements, but the need to maintain production at Electric Boat pending development of a new submarine. The Committee is concerned about the efficacy of a proposal to seek approximately $2 billion for the procurement of an operationally unnecessary asset with a troubled acquisition history when other, less expensive options may serve to bridge production, such as an improved SSN–688 (as proposed by the Navy itself in March 1992).

Development and eventual production of a New Attack Submarine is also a key feature of the Department's plans. The fiscal year 1994 request and this bill contain $476 million for development efforts in this regard and prior to entering production additional development funding, in all likelihood well in excess of $3 billion, will be required.

Given budget pressures, the decline in submarine force structure, and the ability of existing SSN–688's to meet projected threats, the Committee questions the need to develop and construct an entire new class of submarines solely for the purpose of maintaining a submarine production base. The Committee is also concerned about an institutional bias within the Navy towards developing new submarine and nuclear reactor technology, which it believes has stifled analysis of less expensive alternatives which could preserve necessary industrial capacity. In particular, the Committee believes inadequate attention has been given to the possibility of overhauling

and then upgrading existing SSN–688's as a less expensive alternative to procuring and developing new generation submarines.

Half the SSN–688 inventory (31 submarines) consists of SSN–688's without vertical launch systems and other improvements associated with the improved-688 variants. The Committee suggests that a program combining refueling/service life extensions plus an upgrade of these early-model SSN–688's to a configuration approaching the 688I (possibly including technology insertion of additional improvements developed for Seawolf) may be a more cost-effective means of preserving the industrial base. Much as the Army has developed a program to upgrade existing M–1 tanks to preserve key engineering and manufacturing skills, the Committee believes a SSN–688 upgrade program in lieu of new production could provide a similarly workable and affordable option for the submarine industrial base. Yet it appears the Department, and the Navy specifically, is fixated on new submarine production and development at a time when neither budgets nor requirements will readily accommodate them.

In order to fully assess the Department's plan to sustain the submarine base and possible alternatives, the Committee therefore directs the Secretary of Defense to submit a report by March 1, 1994, which addresses the following issues:

(1) Future funding requirements to complete the SSN–21 and SSN–22 submarines and the means by which the Department plans to secure these funds;

(2) Funding requirements in each fiscal year 1995–2000 for both the proposed SSN–23 and the New Attack Submarine and whether these funds are included in the Department's Future Years Defense Plan;

(3) Projected, in actual then-year dollars, total program cost, development cost, procurement cost, estimated per unit cost, acquisition objective, and mission requirements for the New Attack Submarine;

(4) A comparison of the costs associated with using a SSN–688I rather than a Seawolf as the production bridge at Electric Boat;

(5) An assessment of the costs and feasibility of a program combining overhaul and upgrade of existing SSN–688 submarines as an alternative to development and production of the New Attack Submarine to meet both operational requirements and sustain the industrial base.

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TITLE I

MILITARY PERSONNEL

PROGRAMS AND ACTIVITIES FUNDED BY MILITARY PERSONNEL APPROPRIATIONS

Military personnel are the most important resource of the Defense Department. The President's budget request reflects a continuation and, in fact, acceleration of the drawdown of military personnel. The reductions in military personnel will be achieved through reduced accessions, voluntary separation incentives, and by managing early retirements. The Department will continue to use these separation incentives to achieve the necessary roductions and help minimize involuntary separations.

A significant personnel action in the fiscal year 1994 budget request was the recommendation of a pay freeze. The Committee feels our current state of readiness is due to the high quality of our military forces. A freeze in the military's pay would begin to have an impact on retention and accessions and ultimately on the quality of the force. It would also increase the comparability gap between the military and private sector pay to almost 15 percent. The Committee feels strongly that a pay freeze in fiscal year 1994, especially with the added uncertainty and turbulence being caused by the drawdown of forces, would not only affect military readiness, but morale as well. Therefore, the Committee recommends $1,055,050,000 for a 2.2 percent pay raise for military personnel.

SUMMARY OF MILITARY PERSONNEL RECOMMENDATIONS FOR FISCAL YEAR 1994

Fiscal year 1993	$76,275,025,000
Fiscal year 1994 budget request	70,083,770,000
Fiscal year 1994 recommendation	71,277,520,000
Change from budget request	+1,193,750,000

The Committee recommends an appropriation of $71,277,520,000 for the Military Personnel accounts. The recommendation is a decrease of $4,997,505,000 below the $76,275,025,000 appropriated in fiscal year 1993. These military personnel budget total comparisons include appropriations for the active, reserve, and National Guard accounts. The following tables include a summary of the recommendations by appropriation account. Explanations of changes from the budget request appear later in this section.

SUMMARY OF APPROPRIATION ACCOUNT OF THE FISCAL YEAR 1994 MILITARY PERSONNEL RECOMMENDATION

[In thousands of dollars]

Account	Budget request	Recommendation	Change from budget
Military Personnel:			
Army	$21,206,600	$21,571,287	+$364,687
Navy	18,356,900	18,633,383	+276,483
Marine Corps	5,678,700	5,763,117	+84,417
Air Force	15,629,630	15,916,937	+287,307
Subtotal, Active	60,871,630	61,884,644	+1,012,814
Reserve Personnel:			
Army	2,114,400	2,143,272	+28,872
Navy	1,528,700	1,565,838	+37,138
Marine Corps	308,000	350,490	+42,490
Air Force	772,748	783,158	+10,410
National Guard Personnel:			
Army	3,290,200	3,334,183	+43,983
Air Force	1,197,892	1,215,935	+18,043
Subtotal, Guard and Reserve	9,211,940	9,392,876	+180,936
Total, Title I	70,083,770	71,277,520	+1,193,750

The fiscal year 1994 budget request included a decrease of 107,700 end strength for the active forces and a decrease of 60,430 end strength for the selected reserve over fiscal year 1993 authorized levels.

The Committee recommends the following levels highlighted in the tables below.

OVERALL ACTIVE END STRENGTH

Fiscal year 1993 estimate	1,728,300
Fiscal year 1994 budget request	1,620,600
Fiscal year 1994 House authorization	1,620,600
Fiscal year 1994 Senate authorization	1,622,200
Fiscal year 1994 recommendation	1,620,600
Compared with fiscal year 1993	−107,700
Compared with year 1994 budget request	....

OVERALL SELECTED RESERVE END STRENGTH

Fiscal year 1993 estimate	1,079,930
Fiscal year 1994 budget request	1,019,500
Fiscal year 1994 House authorization	1,019,500
Fiscal year 1994 Senate authorization	1,040,460
Fiscal year 1994 recommendation	1,026,870
Compared with fiscal year 1993	−53,060
Compared with fiscal year 1994 budget request	+7,370

	Fiscal year 1993 estimate	Fiscal year 1994				Comparison of request with recommendation
		Budget request	House authorization	Senate authorization	Recommendation	
Active Forces (end strength):						
Army	575,000	540,000	540,000	540,000	540,000	....
Navy	526,400	480,800	480,800	480,800	480,800	....
Marine Corps	182,000	174,100	174,100	177,800	174,100	....
Air Force	444,800	425,700	425,700	424,400	425,700	....

	Fiscal year 1993 estimate	Fiscal year 1994 Budget request	House authorization	Senate authorization	Recommendation	Comparison of request with recommendation
Total, Active Force	1,728,300	1,620,600	1,620,600	1,622,200	1,620,600	
Guard and Reserve (end strength):						
Army Reserve	279,615	260,000	260,000	260,000	260,000	
Navy Reserve	133,675	113,400	113,400	127,000	115,613	+2,213
Marine Corps Reserve	42,315	36,900	36,900	42,200	42,000	+5,100
Air Force Reserve	82,300	81,500	81,500	81,500	81,557	+57
Army National Guard	422,725	410,000	410,000	410,000	410,000	
Air National Guard	119,300	117,700	117,700	119,760	117,700	
Total, Guard and Reserve	1,079,930	1,019,500	1,019,500	1,040,460	1,026,870	+7,370

ADJUSTMENTS TO MILITARY PERSONNEL ACCOUNT

OVERVIEW

BASE OPERATIONS/DBOF TEST

The Committee disagrees with the budget request to include base operations support for several Army installations in the Defense Business Operations Fund. All DoD accounts have been adjusted to return the funding of base operations support to host units.

DEFENSE CONTRACT AUDIT AGENCY (DCAA) AND DEFENSE CONTRACT MANAGEMENT COMMAND (DCMC)

The Committee disagrees with the budget request to include DCAA/DCMC in the Defense Business Operations Fund. All DoD accounts have been adjusted to return the funding to host units.

FORCE STRUCTURE ADJUSTMENT

The Committee agrees with the President's budget request for Active and Guard and Reserve end strength levels, and believes the end strength reductions for the Guard and Reserve are more realistic in light of previous rates enacted by the Congress. The Committee recommends appropriations to support the end strength contained in the National Defense Authorization Bill of Fiscal Year 1994. Funds have been added to reinstate the personnel and operation and maintenance support of the Navy Reserve, Marine Corps Reserve, and Air Force Reserve as follows:

Navy Reserve. The Committee restored, above the budget request, the 15 units for the Craft of Opportunity Program (COOP). $3,200,000 for 523 reservists and 99 AGRs in Reserve personnel, Navy; and $2,000,000 in Operation and maintenance, Navy Reserve for the O&M tail to support these additional military personnel.

The Committee also restored, above the budget request, four P–3 squadrons. $12,900,000 for 1,078 reservists and 456 AGRs in Reserve personnel, Navy; and $20,400,000 in Operation and maintenance, Navy Reserve for the O&M tail to support these additional military personnel.

Marine Corps Reserve. The Committee restored, above the budget request, $38,000,000 to provide an end strength level of 42,000 in keeping with the philosophy espoused in the Secretary of Defense's

Bottom Up Review; and $8,000,000 in Operation and Maintenance, Marine Corps Reserve for the O&M tail to support these additional military personnel.

Air Force Reserve. The Committee included additional funds for the WC–130 Weather Reconnaissance Mission. $723,000 for 57 reservists in Reserve personnel, Air Force; and $1,884,000 in Operation and maintenance, Air Force Reserve for 35 technicians and other operating expenses.

FULL-TIME SUPPORT STRENGTHS

There are four categories of full-time support in the Guard and Reserve components: civilian technicians, active Guard and Reserve (AGR), non-technician civilians, and active component personnel. Full-time support end strength in all categories totalled 166,251 in fiscal year 1993, and the fiscal year 1994 budget request is 160,298.

The Committee recommends the continuation of the general provision (section 8012) which sets a floor on technicians and a ceiling on AGRs, and which exempts technician personnel from any administratively-imposed freeze on civilian personnel.

The following table summarizes Guard and Reserve full-time support end strengths:

GUARD AND RESERVE FULL-TIME END STRENGTHS

	Fiscal year 1993 appropriated	Budget request	HASC	SASC	Committee recommendation	Recommendation versus request
Army Reserve:						
AGR	12,637	12,542	12,542	12,542	12,542	....
Technicians	7,339	7,159	7,159	7,159	7,159	....
Navy Reserve TAR	21,490	19,369	19,369	20,415	19,924	+555
Marine Corps Reserve	2,285	2,119	2,119	2,285	2,285	+166
Air Force Reserve:						
AGR	636	648	648	648	648	....
Technicians	10,516	10,357	10,357	10,357	10,392	+35
Army National Guard:						
AGR	24,736	24,180	24,180	24,180	24,180	....
Technicians	27,084	27,259	27,259	27,259	27,259	....
Air National Guard:						
AGR	9,106	9,389	9,389	9,517	9,389	....
Technicians	25,424	24,251	24,251	24,251	24,251	....
Total:						
AGR/TAR	70,890	68,247	68,247	69,587	68,968	+721
Technicians	70,363	69,026	69,026	69,026	69,061	+35

TECHNICIANS

The Committee has appropriated sufficient funds in the Operation and Maintenance acccounts of the Army Reserve, Air Force Reserve, Army National Guard, and Air National Guard to cover the floor of 69,061 as set in section 8012. These funds should not be used for any other purpose without a prior approval reprogramming being submitted to the Committee.

In addition, the Committee includes section 8030 which provides the Secretary of Defense with authority to transfer prior year unobligated balances and funds appropriated in this Act to the Oper-

ation and Maintenance appropriations for the purpose of providing military technician pay the same exemption from any sequestration. The Committee expects the Department to follow the intent of this position.

BORDER PROTECTION FUNCTIONS

The Committee recommends that the Department study legislation as introduced in H.R. 1017, dated February 18, 1993, which would authorize the Secretary of Defense to assign military personnel to assist the Immigration and Naturalization Service (INS) and the United States Customs Service in performing their border protection functions. This legislation contains proposals to address valid concerns about illegal immigration, and the Committee directs the Department to report back by May 15, 1994 on these recommended proposals.

MILITARY PERSONNEL, ARMY

Fiscal year 1993 appropriation	$23,238,457,000
Fiscal year 1994 budget request	21,206,600,000
Committee recommendation	21,571,207,000
Change	+364,607,000

The Committee recommends an appropriation of $21,571,207,000 for Military Personnel, Army. The recommendation is a decrease of $1,667,250,000 below the $23,238,457,000 appropriated for fiscal year 1993. The adjustments to the fiscal year 1994 budget request are as follows:

[In thousands of dollars]

Pay increase	+313,730
Base Support DBOF adjustment	+41,877
DCAA/DCMC DBOF adjustment	+9,000
Total	+364,607

DISPOSITION OF CAPTURED EQUIPMENT

The Committee directs the Secretary of the Army to provide a report to the Committees on Appropriations by May 15, 1994 regarding the disposition of captured military wheeled or tracked vehicles during Operation Desert Storm for use or possible use as war trophies or display items at individual unit or command posts, forts or museums.

MILITARY PERSONNEL, NAVY

Fiscal year 1993 appropriation	$19,228,564,000
Fiscal year 1994 budget request	18,356,900,000
Committee recommendation	18,633,383,000
Change	+276,483,000

The Committee recommends an appropriation of $18,633,383,000 for Military Personnel, Navy. The recommendation is a decrease of $595,181,000 below the $19,228,564,000 appropriated for fiscal year 1993. The adjustments to the fiscal year 1994 budget request are as follows:

[In thousands of dollars]

Pay increase	+266,483

DCAA/DCMC DBOF adjustment	+10,000
Total	+276,483

MILITARY PERSONNEL, MARINE CORPS

Fiscal year 1993 appropriation	$5,980,998,000
Fiscal year 1994 budget request	5,678,700,000
Committee recommendation	5,763,117,000
Change	+84,417,000

The Committee recommends an appropriation of $5,763,117,000 for Military Personnel, Marine Corps. The recommendation is a decrease of $217,881,000 below the $5,980,998,000 appropriated for fiscal year 1993. The adjustment to the fiscal year 1994 budget request is as follows:

[In thousands of dollars]

Pay increase	+84,417

MILITARY PERSONNEL, AIR FORCE

Fiscal year 1993 appropriation	$18,522,963,000
Fiscal year 1994 budget request	15,629,630,000
Committee recommendation	15,916,937,000
Change	+287,307,000

The Committee recommends an appropriation of $15,916,937,000 for Military Personnel, Air Force. The recommendation is a decrease of $2,606,026,000 below the $18,522,963,000 appropriated for fiscal year 1993. The adjustments to the fiscal year 1994 budget request are as follows:

[In thousands of dollars]

Pay increase	+264,307
DCAA/DCMC DBOF adjustment	+23,000
Total	+287,307

RESERVE PERSONNEL, ARMY

Fiscal year 1993 appropriation	$2,170,496,000
Fiscal year 1994 budget request	2,114,400,000
Committee recommendation	2,143,272,000
Change	+28,872,000

The Committee recommends an appropriation of $2,143,272,000 for Reserve Personnel, Army. The recommendation is a decrease of $27,224,000 below the $2,170,496,000 appropriated for fiscal year 1993. The adjustment to the fiscal year 1994 budget request is as follows:

[In thousands of dollars]

Pay increase	+28,872

78TH INFANTRY DIVISION (EXERCISE)

The Committee reiterates its support of the Army's initiative to convert and redesignate the 78th Division as an Infantry Division (Exercise) with the headquarters remaining in Edison, New Jersey. The Committee expects to have prior notification 60 days in advance of any proposed changes in the implementation of this plan as referred in the Assistant Secretary of the Army (Manpower and

Reserve Affairs) letter report to the Committee dated February 11, 1992.

RESERVE PERSONNEL, NAVY

Fiscal year 1993 appropriation	$1,653,200,000
Fiscal year 1994 budget request	1,528,700,000
Committee recommendation	1,565,838,000
Change	+37,138,000

The Committee recommends an appropriation of $1,565,838,000 for Reserve Personnel, Navy. The recommendation is a decrease of $87,362,000 below the $1,653,200,000 appropriated for fiscal year 1993. The adjustments to the fiscal year 1994 budget request are as follows:

[In thousands of dollars]

Pay increase	+21,038
COOP program	+3,200
P–3 squadrons	+12,900
Total	+37,138

CRAFT OF OPPORTUNITY PROGRAM (COOP)

The Committee recommends $3,200,000 to restore the 15 COOP units that were deleted from the budget request. The Committee also recommends that section 8024 in the general provisions be retained that prohibits this program from being discontinued.

P–3 SQUADRONS

The Committee recommends $12,900,000 to restore 4 Navy Reserve P–3 squadrons that were proposed to be deleted in the budget. The Committee is concerned about the drawdown of P–3 aircraft and addresses this program elsewhere in the report.

RESERVE PERSONNEL, MARINE CORPS

Fiscal year 1993 appropriation	$345,526,000
Fiscal year 1994 budget request	308,000,000
Committee recommendation	350,490,000
Change	+42,490,000

The Committee recommends an appropriation of $350,490,000 for Reserve Personnel, Marine Corps. The recommendation is an increase of $4,964,000 above the $345,526,000 appropriated for fiscal year 1993. The adjustments to the fiscal year 1994 budget request are as follows:

[In thousands of dollars]

Pay Increase	+4,490
Force Structure Adjustment	+38,000
Total	+42,490

RESERVE PERSONNEL, AIR FORCE

Fiscal year 1993 appropriation	$729,019,000
Fiscal year 1994 budget request	772,748,000
Committee recommendation	783,158,000
Change	+10,410,000

The Committee recommends an appropriation of $783,158,000 for Reserve Personnel, Air Force, The recommendation is an increase of $54,139,000 above the $729,019,000 appropriated for fiscal year 1993. The adjustments to the fiscal year 1994 budget request are as follows:

[In thousands of dollars]

Pay increase	+9,687
WC–130 weather reconnaissance mission	+723
Total	+10,410

WC–130 WEATHER RECONNAISSANCE MISSION

The Committee continues to believe that the weather reconnaissance mission is critical to the protection of Defense installations and the entire population living along the east and Gulf coasts of the United States. Section 8053 has been included which prohibits funds to reduce or disestablish the operation of the 815th Weather Squadron of the Air Force Reserve if such action would reduce the weather reconnaissance mission below the levels funded in this bill. The level specifically funded in this bill is to support a stand alone squadron with dedicated 10 PAA aircraft, 20 line assigned aircrews evenly divided between Air Reserve Technician (ART) and Reserve aircrews, and at least 1,600 flying hours dedicated to this mission. Funding has also been provided to ensure adequate operation and maintenance support. The Committee is adamant that this important mission be continued in accordance with this direction and directs the Air Force Reserve to complete and provide manpower, logistics and flying hour documents in support of this mission prior to the end of the first quarter of the fiscal year. The Committee also directs the Air Force Reserve to allow the 815th Weather Squadron to perform other important service, joint service, DoD, or interagency missions during the nonhurricane season or slow periods during hurricane season. These missions should include, but not be limited to training, environmental data, sensor, and intelligence research and gathering, other weather operations and research, and joint operations research.

NATIONAL GUARD PERSONNEL, ARMY

Fiscal year 1993 appropriation	$3,239,702,000
Fiscal year 1994 budget request	3,290,200,000
Committee recommendation	3,334,183,000
Change	+43,983,000

The Committee recommends an appropriation of $3,334,183,000 for National Guard Personnel, Army. The recommendation is an increase of $94,481,000 above the $3,239,702,000 appropriated for fiscal year 1993. The adjustment to the fiscal year 1994 budget request is as follows:

[In thousands of dollars]

Pay increase	+43,983

168TH AVIATION BATTALION

The Committee is concerned with the Army's restructuring initiative (ARI) with regard to the conversion to an all Apache force in the National Guard helicopter aviation battalions. The Commit-

tee expects to be notified of any proposed changes to the conversion of the 168th Helicopter Aviation Battalion from an AH–1 battalion to an AH–64 battalion.

1/108TH ARMORED CALVARY SQUADRON

The 1/108th Armored Calvary Squadron (ACS) has historically had an important role and mission to our nation's defense. The Committee is aware of the Army's recent decisions concerning the restructuring of the 1/108th Armored Calvary Squadron and therefore, directs the Army to work with the National Guard Bureau and the ACS in order to define a suitable and comparable mission in order to maintain its viability and readiness status. The Committee directs the Secretary of the Army to notify the Committee 30 days prior to any official change to the ACS's status or mission.

NATIONAL GUARD PERSONNEL, AIR FORCE

Fiscal year 1993 appropriation	$1,166,100,000
Fiscal year 1994 budget request	1,197,892,000
Committee recommendation	1,215,935,000
Change	+18,043,000

The Committee recommends an appropriation of $1,215,935,000 for National Guard Personnel, Air Force. The recommendation is an increase of $49,835,000 above the $1,166,100,000 appropriated for fiscal year 1993. The adjustment to the fiscal year 1994 budget request is as follows:

[In thousands of dollars]

Pay increase	+18,043

TITLE II

OPERATION AND MAINTENANCE

The fiscal year 1994 budget request for operation and maintenance (O&M) is $74,239,308,000 in new obligational authority, which is an increase of $4,833,345,000 from the amounts appropriated in the fiscal year 1993 Appropriations bill. The request also includes $3,035,300,000 cash transfer from the Defense Business Operations Fund and $500,000,000 cash transfer from the National Defense Stockpile Fund.

The accompanying bill recommends $73,771,103,000 for fiscal year 1994, which is a decrease of $468,205,000 from the budget request and $4,365,140,000 above the amounts appropriated in fiscal year 1993. Additionally, this level is $1,132,014,000 below the amounts authorized by the House Armed Services Committee.

These appropriations finance the costs of operating and maintaining the Armed Forces, including the reserve components and related support activities of the Department of Defense (DOD), except military personnel costs. Included are amounts for pay of civilians, services for maintenance of equipment and facilities, fuel, supplies and spares and repair parts for weapons and equipment. Financial requirements are influenced by many factors, including force level such as the number of aircraft squadrons, Army or Marine Corps divisions, installations, military strength, deployments, rates of operational activity, and quantity and complexity of major equipment such as aircraft, ships, missiles, and tanks in operation.

OPERATION AND MAINTENANCE OVERVIEW

The Committee's actions reaffirm its longstanding commitment to protect the readiness of our armed forces. Committee visits to various installations and discussions with field commanders reveal that signs of the "hollow force" are surfacing. Unit training and exercises are being shortened or eliminated because of lack of funds. Equipment maintenance backlogs are again increasing—up by 250% since fiscal year 1992. OPTEMPO funds are being used to pay for contingencies for which were not budgeted.

The Committee is very concerned about the Department's request to fully fund the O&M appropriation with a $3 billion transfer of excess cash from the Defense Business Operations Fund (DBOF). According to officials from the Office of the Secretary of Defense, that large amount of cash may not materialize. This would mean that the operation and maintenance appropriation may not be able to fully fund those programs that directly affect the readiness of the force.

Given funding uncertainties, the Committee agrees to provide an additional $1.1 billion to ensure that the Services' OPTEMPOs are adequately funded, to reduce depot maintenance backlogs and to

support and maintain base operations. Other adjustments are to ensure that other top priority programs are adequately funded.

The table below summarizes the Committee's recommendations:

	Budget request	Committee recommended	Change from request
Summary:			
O&M, Army	14,966,194	15,221,091	+254,897
O&M, Navy	18,139,200	18,097,782	−41,418
O&M, Marine Corps	1,697,800	1,773,889	+76,889
O&M, Air Force	18,582,984	18,305,447	−277,537
O&M, Defensewide	9,500,581	9,497,133	3,448
O&M, Army Reserve	1,107,800	1,115,095	+7,295
O&M, Navy Reserve	773,800	807,200	+33,400
O&M, Marine Corps Reserve	75,100	86,855	+11,755
O&M, Air Force Reserve	1,354,578	1,370,222	+15,644
O&M, Army National Guard	2,218,900	2,272,018	+53,118
O&M, Air National Guard	2,657,233	2,695,233	+38,000
National Board for the Promotion of Rifle Practice, Army	2,483	2,483	
Court of Military Appeals, Defense	6,055	5,855	−200
Support for International Sporting Competitions, Defense		6,000	+6,000
Summer Olympics			
World Cup USA 1994			
World University Games			
Real Property Maintenance, Defense			
Environmental Restoration, Defense	2,309,400	1,716,800	−592,600
Humanitarian Assistance		15,000	+15,000
Global Cooperative Initatives	448,000	383,000	−65,000
Former Soviet Union Threat Reduction	400,000	400,000	
Grand Total, O&M	74,239,308	73,771,103	−468,205
Transfer	(3,535,300)	(3,535,300)	
Total funds available. O&M	(77,774,608)	77,306,403)	−468,205)

MATERIAL READINESS

The Committee is concerned that the current high level of readiness not be jeopardized as funding levels for the Department of Defense decrease. The Department is directed to provide sufficient stock fund purchasing authority to insure the availability of spares and repair parts needed to maintain adequate material readiness levels. To avoid shortages of critical items while continuing to reduce excess inventeries, the Services and the Defense Logistics Agency are expected to closely monitor stockage levels and provide effective management of the supply functions under their control.

O–1

The O–1 format is a vast improvement from budget justification materials submitted in years past. The Committee will work with the Department to further refine the O–1 format prior to the submission of the fiscal year 1995 budget request.

The Department shall follow normal reprogramming procedures prior to any transfer of $10 million or more from the "Budget Activity" level.

BASE OPERATIONS/DBOF TEST

The Committee denies the request to include base operations support for several Army installations in the Defense Business Operations Fund. All DOD accounts have been adjusted to return the funding of base operations support to host units.

TRENCHLESS TECHNOLOGY

The Committee directs the Department to consider the use of "trenchless" technology on underground waste water collection systems in DOD installations. This technology may solve the continuing problems of decaying underground wastewater and infrastructure.

DEPOT MAINTENANCE ISSUES

Within the past year, the Department of Defense's depot maintenance operations have come under considerable scrutiny. Among the issues raised are the degree to which private industry can or should be involved in conducting depot-level maintenance, the existence of considerable overcapacity in the existing depot maintenance system, and the failure of the DoD to aggressively pursue opportunities to streamline depot operations through "interservicing" (having one service perform depot maintenance for the other services, in the process eliminating duplicative and less efficient activities).

In conjunction with the ongoing reduction in defense force structure, it is clear these factors call for a significant reappraisal of the Department's depot maintenance operations. The Committee believes each of these issues raise fundamental questions regarding the future of the depot system which must be addressed at the most senior levels of the Department. This effort must be made from a comprehensive, DoD-wide perspective rather than the narrower views of each of the services.

Privatization. Many sectors of private industry have called for a shift of maintenance activities from the services' in-house depots to the private sector, in order to preserve capabilities previously dedicated to defense production and manufacturing. Some have suggested adopting policies which would transition depot-level maintenance for all new weapons systems to the private sector.

The Committee would observe that private industry's share of the depot maintenance program has and will continue to be substantial, in excess of one-third. In addition, in recent testimony to Congress the GAO cited concerns by Defense Department officials about the ability of the private sector to respond to short-notice and conflict requirements, whether private contractors can provide depot maintenance at lower cost, and about the ability of maintenance contracts to sustain manufacturing skills without significantly increasing repair costs.

Last year the Committee expressed its concern over this matter and directed the Department not to unilaterally implement depot "privatization" initiatives absent Congressional approval. The Committee continues to believe the Department must develop a uniform policy concerning the public-private share of depot maintenance which, if it incorporates changes to existing policy, should be forwarded as a legislative initiative.

Accordingly, the Committee recommends a new general provision (Section 8115) which reaffirms existing law in this regard and precludes the Department from unilaterally implementing changes regarding the public-private performance of depot-level maintenance.

The Committee notes the House Armed Services Committee has recommended the formation of a Defense Depot Task Force to consider the appropriate mix between public and private activities in performing maintenance as well as pricing policies. The Committee believes it is essential such an analysis be conducted, whether by a Task Force or existing authorities. The Secretary of Defense is directed to carry out the analysis requested by the Committee on Armed Services and report its findings to the Committee by April 1, 1994.

Interservicing. The Department's failure to adequately consider and implement depot maintenance interservicing has been well documented. Studies by both the Joint Chiefs of Staff and GAO indicate there is considerable overcapacity in the existing depot structure, ranging up to 50 percent, which if streamlined could generate cost savings in the billions of dollars. However, the unwillingness of the services to cooperate in interservicing, coupled with what GAO describes as a lack of oversight and strong leadership by OSD, have squandered opportunities for the Department to both eliminate excess capacity and save money.

In December 1992, the Deputy Secretary of Defense directed the services to develop integrated proposals for depot maintenance interservicing for consideration during development of the Department's 1993 base closure and realignment recommendations. The combination of service stonewalling and the transition of new civilian appointees in the Department brought this effort to a standstill. The new Secretary of Defense has stated the Department did not have adequate time to address the interservicing issue.

The Committee believes it is imperative the DoD address this issue. There must be a strong and sustained effort, overseen by OSD, to aggressively develop, evaluate, and implement depot maintenance interservicing proposals in order to overcome the parochialism which continues to impede effective and sensible management of depot maintenance. Failure to do so will result in the needless expenditure of scarce O&M dollars, putting at risk the Secretary of Defense's objective of maintaining a "ready to fight" force.

Accordingly, the Committee directs the Secretary of Defense to take the following steps:

(1) Establish a process for the development and consideration of depot maintenance interservicing options, including participation by all four services, in a fashion permitting such options to be considered by the Secretary in the Department's preparation for the 1995 Base Closure and Realignment process;

(2) The areas to be analyzed shall include, but not be limited to, the following commodity areas as previously defined by the Defense Depot Maintenance Council: fixed-wing aircraft, rotary-wing aircraft, tactical missiles, wheeled vehicles, and ground communications and electronics, with additional areas to be considered at the discretion of the Secretary or his representatives;

(3) In conducting its analysis, the Department shall not consider consolidations simply for the sake of interservicing but in order to achieve the greatest cost-savings, maximizing use of

its most efficient facilities, and eliminating excess depot capacity.

The Committee directs the Secretary to report to the Committee by January 15, 1994, on the procedures he has adopted to carry out these directives.

Depot Workload in CONUS depots. The Committee agrees with the direction by the House Armed Services Committee that the Department of Defense shall not open up competition to foreign governments and businesses for workload performed in depots located in the United States and its territories.

DD Form 1414, Base for Reprogramming. Depot maintenance shall be identified as a special interest item in the DD Form 1414, Base for Reprogramming. The Committee recommends the following depot maintenance funding levels for DD 1414, Base for Reprogramming:

Army	$920,700,000
Navy	3,529,900,000
Marine Corps	66,750,000
Air Force	1,152,200,000
Army Reserve	48,200,000
Navy Reserve	108,600,000
Marine Corps Reserve	1,800,000
Air Force Reserve	136,100,000
Army National Guard	113,700,000
Air National Guard	255,500,000

GOVERNMENT CLASSIFICATION

The Committee supports the President's decision to establish a task force to conduct a review of government classification rules and procedures. The Committee expects this effort to produce a comprehensive post-Cold War reform plan that addresses the current problem of over-classification, which exacts excessive costs both in dollars and in the ability of a democratic society to function. The Committee further expects that the new classification policies and practices will be reflected as savings in future budget requests, and directs the Department of Defense and Intelligence Community to submit a joint report by March 31, 1994, that provides (1) an accounting of the total amount of funds spent on all classification-related activities from fiscal year 1993 and an estimate of expenditures for fiscal year 1994, and (2) a plan to reduce expenditure for classifying information and for keeping information classified, which shall include a specific expenditure-reduction goal for fiscal year 1995.

ROTC SCHOLARSHIPS

The Committee has taken notice of the overall cost of the nation's ROTC program and is interested in exploring methods for achieving savings.

It is noted that the Services are, in some cases, funding ROTC scholarships at private institutions at much higher costs than comparable programs at public institutions within the same geographic or political regions. Accordingly, the Committee is interested in exploring methods for limiting the stipend for ROTC scholarships in private institutions to the costs of a similar scholarship in the most expensive public institution within the same State.

To further explore this goal, each Service shall submit a report to the House and Senate Committees on Appropriations and Armed Services addressing the number of additional scholarships available under such a proposal; cost savings if no additional scholarships are awarded due to force structure requirements; the effect of such a policy on both private institution ROTC programs and public institution ROTC programs; and the effect of such a policy on military readiness. Each Service shall submit this report by March 1, 1994. Should the report not be received by that date, all funds for the offending Service's private institution ROTC scholarships shall be withheld until the report is received.

COMBAT BOOTS

The Committee remains concerned about the industrial base for combat boots. This was reinforced by the recently received "Warstopper" report, from the Department, which concluded that of all the items reviewed, the combat boot was the only one that required a truly unique manufacturing process and equipment. Given the current uniqueness of this item the Department must ensure that an adequate capability is maintained to meet the needs of the military both in peacetime and for contingency purposes.

The Committee is disappointed that the additional information requested last year regarding the combat boot manufacturers was not all included in that report. That information should be provided the Committee no later than December 15, 1993.

SURPLUS GOODS AND TRAINING SERVICES

The Committee understands that the Metropolitan Police Department (MPD) of Washington, D.C., wishes to procure surplus goods and training services from the Department of Defense. The Committee supports this request and urges the Department of Defense to contact the MPD and provide whatever assistance possible to this organization. The Committee directs DOD as well as any unit or branch of DOD to negotiate agreements with the MPD to provide the MPD with goods and services that are surplus or excess to DOD's needs. To facilitate this process the Committee further directs DOD and MPD to establish a procedure so that such agreements will be approved by the Chief of Police of the MPD and Installation Commander/Department Head providing the surplus goods or services.

PRINTING

The Committee is concerned that printing and duplicating within the Defense Printing Service (DPS) may be expanding their capabilities and providing services for non-Defense agencies. The Committee is aware of the current review made by the General Accounting Office (GAO) on the printing functions of the Department of Defense. However, the Committee requests the GAO to submit a more formalized report on its findings on the printing and duplicating issue—one that is statistically valid and based upon comprehensive cost data.

The report should clearly distinguish and provide guidance in the real distinctions between printing and duplicating and the extent

to which they are and should be handled differently by the servicing organization. GAO should also document the extent to which DPS is servicing other agencies or departments.

The GAO should provide valid cost and service comparisons between DPS and the Government Printing Office, including a suitable analysis of variable and fixed costs and other organizational considerations. The GAO should retain the services of acknowledged experts in printing economics to assist in this analysis.

The Committee requests that the report be submitted to the Committees on Appropriations and Armed Services no later than April 15, 1994.

NATIONAL GUARD YOUTH PROGRAMS

Los Angeles Unified School District. The Committee has provided an additional $10,000,000 so that the Army National Guard can continue the outreach program started during fiscal year 1993 in the Los Angeles Unified School District. Of this amount, $500,000 shall be available for the Youth Education Town (YET) Center, a multilingual, multimedia video-based health education program which would be accessed through the Los Angeles education network. The National Guard shall serve as administrator of the funds, which shall be allocated to the Los Angeles Unified School District's magnet, academies and other programs.

Urban Youth Program and Youth Conservation Corps Camp. The Committee provided an additional $5 million to the Army and Air National Guard for the purpose of funding pilot youth programs. An additional $3 million was appropriated for these programs in the fiscal year 1993 Appropriations bill but the National Guard was unable to execute these programs. It is expected that authorization will be provided to execute these programs during fiscal year 1994. Directions outlined in the House report accompanying the fiscal year 1993 Appropriations bill should be followed to implement these programs.

SERVICE-WIDE COMMUNICATIONS

As discussed in detail elsewhere in this report, the Committee has reflected a total of $100,000,000 in savings resulting from more efficient acquisition of commercial communications services. The reductions are allocated as follows: $30,000,000 each to the Army, Navy, and Air Force, and $10,000,000 to the various defense agencies.

A–10/F–16 CONVERSION

It is the Committee's understanding that as a result of the Defense Department's recent "Bottom Up" review a previously planned conversion of the 104th Fighter Group of the Massachusetts Air National Guard from A–10 to F–16 aircraft has been indefinitely postponed. The Committee notes that this conversion had been planned for some time and was originally part of the fiscal year 1994 budget request.

Given the substantial investment that has been made to date at Barnes Municipal Airport in Westfield, Massachusetts in anticipation of the conversion, and the likelihood of further force structure

changes, the Committee believes the Department may have been premature in its proposal to defer the conversion at Barnes. The Committee strongly urges the Department to reexamine its decision on this issue and further directs the Department to give every consideration to proceeding with the F–16 conversion of the 104th Fighter Group at Barnes.

OPERATION AND MAINTENANCE, ARMY

Fiscal year 1993 appropriation	$13,442,418,000
Fiscal year 1994 budget request	14,966,194,000
Committee recommendation	15,221,091,000
Change	+254,897,000

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
OPERATION AND MAINTENANCE, ARMY			
BUDGET ACTIVITY 1: OPERATING FORCES			
LAND FORCES			
COMBAT UNITS	1,548,665	1,658,665	+110,000
TACTICAL SUPPORT	1,104,862	1,104,862	---
THEATER DEFENSE FORCES	201,050	201,050	---
FORCE RELATED TRAINING/SPECIAL ACTIVITIES	1,107,503	1,137,503	+30,000
FORCE COMMUNICATIONS	61,482	61,482	---
DEPOT MAINTENANCE	720,723	920,723	+200,000
JCS EXERCISES	61,147	61,147	---
BASE SUPPORT	2,809,570	2,843,170	+33,600
LAND OPERATIONS SUPPORT			
COMBAT DEVELOPMENTS	227,662	227,662	---
UNIFIED COMMANDS	35,165	35,165	---
TOTAL, BUDGET ACTIVITY 1: OPERATING FORCES	7,877,829	8,251,429	+373,600
BUDGET ACTIVITY 2: MOBILIZATION			
MOBILITY OPERATIONS			
POMCUS	72,600	72,600	---
STRATEGIC MOBILIZATION	171,765	171,765	---
WAR RESERVE ACTIVITIES	30,212	30,212	---
INDUSTRIAL PREPAREDNESS	97,819	97,819	---
TOTAL, BUDGET ACTIVITY 2: MOBILIZATION	372,396	372,396	---
BUDGET ACTIVITY 3: TRAINING AND RECRUITING			
ACCESSION TRAINING			
OFFICER ACQUISITION	44,345	44,345	---
RECRUIT TRAINING	12,597	12,597	---
ONE STATION UNIT TRAINING	12,947	12,947	---
RESERVE OFFICER TRAINING CORPS (ROTC)	95,268	101,018	+5,750
BASE SUPPORT (ACADEMY ONLY)	111,077	111,077	---
BASIC SKILL/ ADVANCE TRAINING			
SPECIALIZED SKILL TRAINING	327,264	327,264	---
FLIGHT TRAINING	257,448	257,448	---
PROFESSIONAL DEVELOPMENT EDUCATION	61,458	61,458	---
TRAINING SUPPORT	349,770	366,770	+17,000
BASE SUPPORT (OTHER TRAINING)	921,972	921,972	---
RECRUITING/OTHER TRAINING			
RECRUITING AND ADVERTISING	151,264	151,264	---
EXAMINING	50,895	50,895	---
OFF-DUTY AND VOLUNTARY EDUCATION	113,430	113,430	---
CIVILIAN EDUCATION AND TRAINING	86,816	86,816	---
JUNIOR ROTC	66,093	66,093	---
BASE SUPPORT (RECRUITING LEASES)	161,877	194,797	+32,920
TOTAL, BUDGET ACTIVITY 3: TRAINING AND RECRUITING	2,827,539	2,883,209	+55,670
BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACTIVITIES			
SECURITY PROGRAMS			
SECURITY PROGRAMS	401,952	401,952	---
LOGISTICS OPERATIONS			
SERVICEWIDE TRANSPORTATION	520,955	595,955	+75,000
CENTRAL SUPPLY ACTIVITIES	479,785	479,785	---
LOGISTIC SUPPORT ACTIVITIES	327,911	338,461	+10,550
AMMUNITION MANAGEMENT	249,790	249,790	---
SERVICEWIDE SUPPORT			
ADMINISTRATION	308,170	272,570	-35,000
SERVICEWIDE COMMUNICATIONS	791,392	761,392	-30,000
MANPOWER MANAGEMENT	71,986	71,986	---
OTHER PERSONNEL SUPPORT	184,704	184,704	---
OTHER SERVICE SUPPORT	421,996	411,996	-10,000
ARMY CLAIMS ACTIVITIES	195,373	195,373	---
REAL ESTATE MANAGEMENT	90,843	90,843	---
BASE SUPPORT	678,371	674,743	-3,628
SUPPORT OF OTHER NATIONS			
INTERNATIONAL MILITARY HEADQUARTERS	222,913	212,913	-10,000
MISC SUPPORT OF OTHER NATIONS	23,396	23,396	---
TOTAL, BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACT	4,941,436	4,937,758	-3,678

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
CLASSIFIED PROGRAMS UNDISTRIB. REDUCTIONS.............	---	15,906	+15,906
GENERAL REDUCTION, DBOF..................................	-880,200	-880,200	---
GENERAL REDUCTION, NATIONAL DEFENSE STOCKPILE FUND....	-150,000	-150,000	---
PRIOR YEAR REDUCTION....................................	-4,906	-4,909	---
REDUCTIONS FOR BRAC III..................................	-18,000	-18,000	---
TRANSFER TO INSPECTOR GENERAL.........................	---	-9,000	-9,000
AUTOMATIC DATA PROCESSING...............................	---	-25,000	-25,000
INVENTORIES...	---	-151,000	-151,000
TOTAL, OPERATION AND MAINTENANCE, ARMY..............	14,936,194	15,221,061	+284,867
(BY TRANSFER - DBOF)............................	(880,200)	(880,200)	---
(BY TRANSFER - NATIONAL DEFENSE STOCKPILE FUND).	(150,000)	(150,000)	---
TOTAL FUNDS AVAILABLE...........................	(15,966,394)	(16,251,261)	(+284,867)

Adjustments to the budget activities that are of special interest are shown below:

	Thousands
Budget Activity 1: Operating Forces:	
Readiness enhancements/OPTEMPO	+130,000
Supplemental fuel tank	+10,000
Depot maintenance backlog	+153,400
C–E depot maintenance backlog	+46,600
BOS/DBOF	+8,650
George AFB/NTC airhead	+3,000
San Francisco Conservation Corps	+300
Base Ops/RPM backlog	+19,650
Equipment maintenance shelters	+2,000
Budget Activity 3: Training and Recruiting:	
ROTC & ROTC Demo Project—IN Univ-NW	+5,750
Educ TNET	+17,000
BOS/DBOF	+32,920
Budget Activity 4: Administration & Servicewide Activities:	
Retro-EUR	+75,000
Fuel cells installation	+2,000
Use of natural gas technology	+2,600
Aircraft maintenance shelters	+5,000
Voice Maintenance Device test	+950
Consultants advisory assistance services	−35,000
General purpose communications	−30,000
SES workyears	−1,500
Memorial Day & July 4th concerts	+900
BOS/DBOF	−6,928
White Sands RPM backlog	+2,700
Hamilton base cleanup	+5,000
Letterkenny RPM backlog	+6,000
Pentagon renevotion	−5,400
Int'l Military HQ	−10,000

MOBILE SUBSCRIBER EQUIPMENT MAINTENANCE

Depot-level maintenance for the Mobile Subscriber Equipment (MSE) program, the largest single Army communications program ever, is performed largely by the private sector. This results from the Army's decision, taken at the time of initial acquisition, to have all MSE-unique depot maintenance performed by the system prime production contractor for the life of the program. Current contract options extend through the year 2008.

This action was taken without considering potential costs savings by having depot-level maintenance performed at Army facilities. In essence, the Army faces the potential of a non-competitive, sole source program for MSE maintenance for at least the next 15 years. Several years ago, the Committee considered terminating this arrangement but deferred action, based on the demands of initial system fielding as well as assurances by the Army it would assess the MSE maintenance concept and adjust accordingly if organic Army support proved cost-effective.

Subsequently, there have been several instances of the Army transitioning from contractor to organic depot level support with considerable cost savings. However, it does not appear the Army has aggressively pursued similar options with respect to MSE.

The Committee believes the MSE maintenance concept must be reexamined in order to ensure maximum efficiency and cost-savings are achieved. Accordingly, the Army is directed to provide a report not later than December 15, 1993, which addresses at a minimum the following:

(1) Current contractual arrangements for the provision of MSE maintenance by the contractor, including annual costs and termination liability;

(2) Efforts already taken or being considered to move from contractor to organic support.

NATIONAL TRAINING CENTER (NTC)

Prepositioned Equipment. The Committee agrees with the Army that prepositioned equipment at the NTC saves training funds. The Committee directs the Army to preposition other types of equipment at the NTC, to include those equipment being withdrawn from Europe.

NTC–Ft. Irwin/George AFB Airhead. The Committee has added $3 million to support implementation of a temporary lease for the operations of the NTC–Ft. Irwin charter fixed wing airhead at George AFB, CA.

SELF-HELP PROGRAM

Of the total amount provided for base operations/real property maintenance, the Department is directed to purchase additional materials for its Self-help Program at various installations. Since funding for new construction is limited, the Department should encourage units to initiate self-help repair projects. The ongoing self-help program at Ft. Benning has made vast improvements to barracks that were build in the 1950s. The Committee strongly recommends that Ft. Bragg initiates a robust self-help program similar to the program at Ft. Benning.

PRESIDIO OF SAN FRANCISCO

Facilities Improvements. The Committee understands that the Army shall make available approximately $21 million to complete the necessary repairs and maintenance to the facilities at the Presidio which were started during the latter part of fiscal year 1993. The Committee expects the Army to honor its written commitment.

San Francisco Conservation Corps. The Committee has provided $300,000 to utilize the San Francisco Conservation Corps to conduct natural resource protection activities at the Presidio of San Francisco.

AUTOMATIC BUILDING MACHINE SHELTERS

Aircraft Protective Shelters. The Committee has been apprised that the Army has completed the test at Ft. Hood to determine whether automatic building machine technology can serve as a low cost alternative as an aircraft shelter. The Committee is pleased to learn that the Army has validated the concept and has declared the shelters effective and acceptable for field use.

The Committee has learned that the Army has prepositioned equipment in Italy that is totally exposed to the elements and their maintenance is being performed using tents. The Committee finds this situation unacceptable but recognizes the fact that additional construction funding for overseas installations will be difficult to obtain. The Committee has provided an additional $5 million for the construction of additional aircraft shelters and directs that a

portion of the funding be used to construct interim maintenance facilities for the high value equipment stored in Italy. The Army is further directed to budget for additional requirements for aircraft shelters beginning in fiscal year 1995.

Equipment Maintenance Facilities. The Committee has provided an additional $2 million to construct equipment maintenance facilities using the automatic building machine technology. Construction of these shelters should begin immediately at Ft. Bragg to replace post-WWII and termite infested maintenance facilities.

VOICE MAINTENANCE INSTRUCTION DEVICE (VMID)

The VMID is a voice synthesis system that provides safety and basic maintenance instructions for both combat and combat support vehicles. The Army is requested to test this device by conducting an operational evaluation on vehicles such as the HMMV, M–109A3, FASSV, and 2.5- and 5-ton trucks. The Committee agrees to provide $950,000 to procure and test the VMIDs. Results of the test shall be forwarded to the Committee by May 1, 1994.

SUPPLEMENTAL FUEL CARRYING CAPABILITY (SFCC)

The (SFCC) is a concept for a proposed requirement for an additional organic onboard refuel capability on Abrams tanks to increase their operation/range and lessen the burden on the fuel resupply system. The concept envisions a portable fuel container and also applies to other vehicles. The Committee understands that TRADOC has recently approved a Mission Need Statement for this requirement. The Committee recommends an additional $10 million to purchase portable fuel containers.

COMBAT SURVIVAL TRAINING PROGRAM

The Committee directs the Army to establish a combat survival training program similar to the Air Force Combat Aircrew Training Program.

INTELLIGENCE PROGRAMS

Reductions to Army intelligence programs are addressed in the classified report.

OPERATION AND MAINTENANCE, NAVY

Fiscal year 1993 appropriation	$19,108,558,000
Fiscal year 1994 budget request	18,139,200,000
Committee recommendation	18,097,782,000
Change	−41,418,000

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
OPERATION AND MAINTENANCE, NAVY			
BUDGET ACTIVITY 1: OPERATING FORCES			
AIR OPERATIONS			
MISSION AND OTHER FLIGHT OPERATIONS	1,797,906	1,847,906	+50,000
FLEET AIR TRAINING	614,655	635,655	+21,000
INTERMEDIATE MAINTENANCE	91,482	101,482	+10,000
AIR OPERATIONS AND SAFETY SUPPORT	144,178	144,178	---
AIRCRAFT DEPOT MAINTENANCE	554,404	604,404	+50,000
AIRCRAFT DEPOT OPERATIONS SUPPORT	25,268	25,268	---
BASE SUPPORT	996,210	993,142	-3,068
SHIP OPERATIONS			
MISSION AND OTHER SHIP OPERATIONS	2,044,690	2,104,690	+60,000
SHIP OPERATIONAL SUPPORT AND TRAINING	453,522	453,522	---
INTERMEDIATE MAINTENANCE	471,610	486,610	+15,000
SHIP DEPOT MAINTENANCE	2,003,269	2,043,269	+40,000
SHIP DEPOT OPERATIONS SUPPORT	645,607	645,607	---
BASE SUPPORT	927,787	927,787	---
COMBAT OPERATIONS/SUPPORT			
COMBAT COMMUNICATIONS	203,346	203,346	---
ELECTRONIC WARFARE	7,522	7,522	---
SPACE SYSTEMS AND SURVEILLANCE	222,017	222,017	---
WARFARE TACTICS	128,850	138,850	+10,000
OPERATIONAL METEOROLOGY AND OCEANOGRAPHY	203,039	203,039	---
COMBAT SUPPORT FORCES	265,475	265,475	---
EQUIPMENT MAINTENANCE	132,676	142,676	+10,000
DEPOT OPERATIONS SUPPORT	1,438	1,438	---
BASE SUPPORT	410,869	440,869	+30,000
WEAPONS SUPPORT			
CRUISE MISSILE	105,996	105,996	---
FLEET BALLISTIC MISSILE	800,006	800,006	---
IN-SERVICE WEAPONS SYSTEMS SUPPORT	48,752	48,752	---
WEAPONS MAINTENANCE	506,616	536,616	+30,000
BASE SUPPORT	86,837	86,837	---
TOTAL, BUDGET ACTIVITY 1: OPERATING FORCES	13,894,096	14,217,027	+322,932
BUDGET ACTIVITY 2: MOBILIZATION			
READY RESERVE AND PREPOSITIONING FORCES			
SHIP PREPOSITIONING AND SURGE	507,726	507,726	---
ACTIVATIONS/INACTIVATIONS			
AIRCRAFT ACTIVATIONS/INACTIVATIONS	6,880	6,880	---
SHIP ACTIVATIONS/INACTIVATIONS	808,505	808,505	---
MOBILIZATION PREPAREDNESS			
FLEET HOSPITAL PROGRAM	17,756	17,756	---
INDUSTRIAL READINESS	12,752	12,752	---
COAST GUARD SUPPORT	18,205	18,205	---
TOTAL, BUDGET ACTIVITY 2: MOBILIZATION	1,371,823	1,371,823	---
BUDGET ACTIVITY 3: TRAINING AND RECRUITING			
ACCESSION TRAINING			
OFFICER ACQUISITION	84,761	84,761	---
RECRUIT TRAINING	4,498	4,498	---
RESERVE OFFICERS TRAINING CORPS (ROTC)	49,961	54,961	+5,000
BASE SUPPORT	112,519	112,519	---
BASIC SKILLS AND ADVANCED TRAINING			
SPECIALIZED SKILL TRAINING	227,268	237,268	+10,000
FLIGHT TRAINING	334,461	334,461	---
PROFESSIONAL DEVELOPMENT EDUCATION	56,773	56,773	---
TRAINING SUPPORT	142,284	142,284	---
BASE SUPPORT	438,117	438,117	---
RECRUITING, AND OTHER TRAINING AND EDUCATION			
RECRUITING AND ADVERTISING	90,478	90,478	---
OFF-DUTY AND VOLUNTARY EDUCATION	55,306	55,306	---
CIVILIAN EDUCATION AND TRAINING	26,848	26,848	---
JUNIOR ROTC	18,484	18,484	---
BASE SUPPORT	427	427	---
TOTAL, BUDGET ACTIVITY 3: TRAINING AND RECRUITING	1,602,185	1,617,185	+15,000

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACTIVITIES			
SERVICEWIDE SUPPORT			
ADMINISTRATION	302,943	277,943	-25,000
EXTERNAL RELATIONS	20,298	20,298	---
CIVILIAN MANPOWER AND PERSON MANAGEMENT	48,833	48,833	---
MILITARY MANPOWER AND PERSON MANAGEMENT	127,315	127,315	---
OTHER PERSONNEL SUPPORT	390,476	390,476	---
SERVICEWIDE COMMUNICATIONS	265,367	235,367	-30,000
BASE SUPPORT	294,565	291,365	-3,200
LOGISTICS OPERATIONS AND TECHNICAL SUPPORT			
SERVICEWIDE TRANSPORTATION	193,230	193,230	---
PLANNING, ENGINEERING AND DESIGN	281,598	281,598	---
ACQUISITION AND PROGRAM MANAGEMENT	368,777	368,777	---
AIR SYSTEMS SUPPORT	195,006	195,006	---
HULL, MECHANICAL AND ELECTRICAL SUPPORT	63,130	63,130	---
COMBAT/WEAPONS SYSTEMS	18,174	18,174	---
SPACE AND ELECTRONIC WARFARE SYSTEMS	80,182	80,182	---
BASE SUPPORT	129,640	134,240	+4,600
SECURITY PROGRAMS			
SECURITY PROGRAMS	533,130	533,130	---
BASE SUPPORT	4,478	4,478	---
SUPPORT OF OTHER NATIONS			
INTERNATIONAL HEADQUARTERS AND AGENCIES	7,657	7,657	---
TOTAL, BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACT	3,324,797	3,271,197	-53,600
CLASSIFIED PROGRAMS UNDISTRIB. REDUCTIONS	---	-10,000	-10,000
GENERAL REDUCTION, DBOF	-1,092,700	-1,092,700	---
GENERAL REDUCTION, NATIONAL DEFENSE STOCKPILE FUND	-150,000	-150,000	---
REDUCTIONS FOR BRAC III	-811,000	-811,000	---
TRANSFER TO INSPECTOR GENERAL	---	-15,200	-15,200
AUTOMATIC DATA PROCESSING	---	-25,000	-25,000
INVENTORIES	---	-275,550	-275,550
TOTAL, OPERATION AND MAINTENANCE, NAVY	18,139,200	18,097,782	-41,418
(BY TRANSFER - DBOF)	(1,092,700)	(1,092,700)	---
(BY TRANSFER - NATIONAL DEFENSE STOCKPILE FUND)	(150,000)	(150,000)	---
TOTAL FUNDS AVAILABLE	(19,381,900)	(19,340,482)	(-41,418)

Adjustments to the budget activities that are of special interest are shown below:

	Thousands
Budget Activity 1: Operating Forces:	
Readiness Enhancements/OPTEMPO	+225,000
Depot Maintenance Backlog	+90,000
Air Warfare Ctr, Tarantuli Prog	+1,000
BOS/DBOF	−3,068
Budget Activity 3: Training & Recruiting:	
Readiness Enhancements	+10,000
Budget Activity 4: Admin & Servicewide Activities:	
Consultants Advisory Assistance Svcs	−25,000
Pentagon Renovation	−3,200
Fuel Cells Installation	+2,000
Use of Natural Gas Technology	+2,600
Long Haul Gen Purpose Communications	−30,000

S–3A MAINTENANCE

Depot-level maintenance for the flight control systems on the S–3A aircraft has been conducted, since its fielding, by private industry. Within the past year the Navy expressed its intention to compete this work between the private sector and a Naval Aviation Depot. Subsequently, the Navy has proposed closing this depot, a plan agreed to by the 1993 Defense Base Closure and Realignment Commission. Accordingly, the Committee directs the Navy to suspend its plans to conduct a public-private competition for this workload.

FLOATING DRYDOCK LEASE AT MOBILE, ALABAMA

The committee has been advised that the Navy is currently leasing a floating drydock (AFDM–3) to a private shipyard in Mobile, Alabama. In 1990, Congress through Conference Report (House Report 101–923) on the National Defense Authorization Act for Fiscal Year 1991 directed the Navy to re-lease the drydock to a ship and repair firm in that graphic region. The Navy subsequently extended the current lease for the full term of the five year option. Accordingly, the lease expired in July, 1993. The rationale for that re-leasing was supported by the expectation that two new naval stations at Mobile, Alabama, and Pascagoula, Mississippi, would become fully operational in 1991. Those two stations in fact became fully operational. Although Naval Station Mobile has since been slated for closure, Naval Station Pascagoula remains open. Mobile is within the Navy's homeport area for Pascagoula and the Navy's base in Pensacola, Florida. Therefore, the committee continues to believe that it would be in the best interest of the Navy for the drydock to remain in Mobile, Alabama, to provide support for the Pascagoula station and for the Pensacola Navy base. In further support of this, the Committee notes that (1) Mobile remains a vital port for the Navy and has a complementary infrastructure (e.g., adequate waterfront accommodations and modern personnel support facilities), (2) ships based at Pascagoula and Pensacola and their vicinities are fully consistent with the Navy's program for achieving strategic advantages (survivability and geographic responsiveness) through Fleet dispersal, and (3) the same ships require a fully capable industrial repair base, including drydocking facilities. Therefore, the committee strongly encourages the Navy to

take the necessary steps to re-lease the drydock to a ship repair firm in Mobile, Alabama. The continued modernization and use of AFDM-8 will provide the Navy a Gulf Coast repair facility with a fully maintained and operable drydock certified to dock Navy vessels.

CONVERSION OF THE USNS CHAUVENET

The Navy, in consultation with Maritime Administration shall continue the conversion of the ship, USNS CHAUVENET, to a training ship for the Texas Maritime Academy's Training Program. Of the funds appropriated for Operation and Maintenance, Navy, $8 million shall be used to complete this conversion.

PHOTOGRAMMETRY

Despite language and clear direction in provious Defense appropriation reports, the Committee is aware that the navy shipyards continue to develop applications and purchase equipment for photogrammetry using in-house resources and personnel when such services can be obtained commercially. Now, two Navy shipyards which have acquired in-house system are slated for closure. The Committee directs the Navy to obtain future photogrammetric services from the private sector. Photogrammetric services currently available in Navy shipyards should be used only to train Navy personnel on the proper use of this technology so that proper specifications can be written and the quality of work and proposals obtained from the private sector can be evaluated. The Navy shall report to the Committee on Appropriations not less than 90 days prior to the establishment of new in-house photogrammetry activities or the expansion of existing in-house activities.

MARE ISLAND NAVAL SHIPYARD

The Committee expects the Navy to continue the necessary repairs and maintenance of facilities at the Mare Island Naval Shipyard until the closure of the shipyard.

INTELLIGENCE PROGRAMS

Reductions to Navy intelligence programs are addressed in the classified report.

OPERATION AND MAINTENANCE, MARINE CORPS

Fiscal year 1993 appropriation	$1,383,138,000
Fiscal year 1994 budget request	1,697,000,000
Committee recommendation	1,773,889,000
Change	+76,889,000

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
OPERATION AND MAINTENANCE, MARINE CORPS			
BUDGET ACTIVITY 1: OPERATING FORCES			
EXPEDITIONARY FORCES			
OPERATIONAL FORCES	297,241	317,241	+20,000
FIELD LOGISTICS	137,586	137,586	---
DEPOT MAINTENANCE	44,152	66,702	+22,550
BASE SUPPORT	713,651	723,921	+10,270
USMC PREPOSITIONING			
MARITIME PREPOSITIONING	64,567	98,667	+34,100
NORWAY PREPOSITIONING	6,705	6,705	---
TOTAL, BUDGET ACTIVITY 1: OPERATING FORCES	1,263,902	1,350,822	+86,920
BUDGET ACTIVITY 3: TRAINING AND RECRUITING			
ACCESSION TRAINING			
RECRUIT TRAINING	5,396	5,396	---
OFFICER ACQUISITION	204	204	---
BASE SUPPORT	86,981	86,981	---
BASIC SKILLS AND ADVANCED TRAINING			
SPECIALIZED SKILLS TRAINING	19,528	19,528	---
FLIGHT TRAINING	164	164	---
PROFESSIONAL DEVELOPMENT EDUCATION	8,919	8,919	---
TRAINING SUPPORT	49,745	49,745	---
BASE SUPPORT	61,101	61,070	-31
RECRUITING AND OTHER TRAINING EDUCATION			
RECRUITING AND ADVERTISING	51,266	51,266	---
OFF-DUTY AND VOLUNTARY EDUCATION	12,506	12,506	---
JUNIOR ROTC	5,104	5,104	---
BASE SUPPORT	6,796	6,796	---
TOTAL, BUDGET ACTIVITY 3: TRAINING AND RECRUITING	275,713	275,682	-31
BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACTIVITIES			
SERVICEWIDE SUPPORT			
LOGISTICS SUPPORT	110,400	110,400	---
SPECIAL SUPPORT	99,122	99,122	-10,000
SERVICEWIDE TRANSPORTATION	37,379	37,379	---
ADMINISTRATION	23,682	23,682	---
BASE SUPPORT	6,842	9,842	---
TOTAL, BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACT	278,385	268,385	-10,000
GENERAL REDUCTION, DBOF	-121,000	-121,000	---
TOTAL, OPERATION AND MAINTENANCE, MARINE CORPS	1,697,000	1,773,000	+76,000
(BY TRANSFER - DBOF)	(121,000)	(121,000)	---
TOTAL FUNDS AVAILABLE	(1,818,000)	(1,894,000)	(+76,000)

Adjustments to the budget activities that are of special interest are shown below:

	Thousands
Budget Activity 1: Operating Forces:	
Readiness Enhancements/OPTEMPO	+20,000
Depot Maint backlog	+22,550
Camp Pendleton Flood Damage Repairs	+11,100
BOS/DBOF	+830
Maritime Prepositioning Shortfall	+34,100
Budget Activity 3: Training & Recruiting:	
BOS/DBOF	−31

OPERATION AND MAINTENANCE, AIR FORCE

Fiscal year 1993 appropriation	$16,009,040,000
Fiscal year 1994 budget request	18,582,984,000
Committee recommendation	18,305,447,000
Change	−277,537,000

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
OPERATION AND MAINTENANCE, AIR FORCE			
BUDGET ACTIVITY 1: OPERATING FORCES			
AIR OPERATIONS			
PRIMARY COMBAT FORCES	2,434,488	2,335,448	-99,040
PRIMARY COMBAT WEAPONS	482,907	482,907	---
COMBAT ENHANCEMENT FORCES	312,117	312,117	---
AIR OPERATIONS TRAINING	457,821	482,821	+25,000
COMBAT COMMUNICATIONS	552,236	552,236	---
BASE SUPPORT	2,260,124	2,341,085	+80,961
COMBAT RELATED OPERATIONS			
GLOBAL C3I AND EARLY WARNING	790,353	790,353	---
NAVIGATION/WEATHER SUPPORT	150,578	150,578	---
OTHER COMBAT OPS SUPPORT PROGRAMS	253,223	253,223	---
JCS EXERCISES	31,405	31,405	---
MANAGEMENT/OPERATIONAL HEADQUARTERS	108,357	108,357	---
TACTICAL INTELLIGENCE AND OTHER SPECIAL ACTIVITIES	186,749	186,748	---
SPACE OPERATIONS			
LAUNCH FACILITIES	280,183	290,183	---
LAUNCH VEHICLES	105,474	105,474	---
SPACE CONTROL SYSTEMS	423,008	423,008	---
SATELLITE SYSTEMS	45,315	45,315	---
OTHER SPACE OPERATIONS	81,978	81,978	---
BASE SUPPORT	315,390	315,390	---
TOTAL, BUDGET ACTIVITY 1: OPERATING FORCES	9,271,708	9,278,627	+6,921
BUDGET ACTIVITY 2: MOBILIZATION			
MOBILITY OPERATIONS			
AIRLIFT OPERATIONS	1,521,193	1,521,193	---
AIRLIFT OPERATIONS C3I	103,481	103,481	---
MOBILIZATION PREPAREDNESS	136,856	136,856	---
PAYMENT TO TRANSPORTATION BUSINESS AREA	1,599,981	1,599,981	---
BASE SUPPORT	1,147,434	1,147,434	---
TOTAL, BUDGET ACTIVITY 2: MOBILIZATION	4,508,945	4,508,845	---
BUDGET ACTIVITY 3: TRAINING AND RECRUITING			
ACCESSION TRAINING			
OFFICER ACQUISITION	44,672	44,872	---
RECRUIT TRAINING	4,660	4,660	---
RESERVE OFFICER TRAINING CORPS (ROTC)	28,809	28,809	---
BASE SUPPORT (ACADEMIES ONLY)	69,953	54,253	-15,700
BASIC SKILLS AND ADVANCED TRAINING			
SPECIALIZED SKILL TRAINING	208,356	208,356	---
FLIGHT TRAINING	381,565	381,565	---
PROFESSIONAL DEVELOPMENT EDUCATION	81,613	72,813	-8,000
TRAINING SUPPORT	69,687	69,687	---
BASE SUPPORT (OTHER TRAINING)	497,306	497,297	-9
RECRUITING, AND OTHER TRAINING AND EDUCATION			
RECRUITING AND ADVERTISING	35,373	35,373	---
EXAMINING	3,788	3,788	---
OFF DUTY AND VOLUNTARY EDUCATION	69,854	69,854	---
CIVILIAN EDUCATION AND TRAINING	71,309	71,309	---
JUNIOR ROTC	16,510	16,510	---
TOTAL, BUDGET ACTIVITY 3 TRAINING AND RECRUITING	1,583,455	1,558,946	-24,509
BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACTIVITIES			
LOGISTICS OPERATIONS			
LOGISTICS OPERATIONS	851,485	501,465	+90,000
TECHNICAL SUPPORT ACTIVITIES	356,793	361,393	+2,600
SERVICEWIDE TRANSPORTATION	212,749	212,749	---
BASE SUPPORT	735,734	740,354	+4,520
SERVICEWIDE ACTIVITIES			
ADMINISTRATION	113,691	98,226	-15,465
SERVICEWIDE COMMUNICATIONS	426,906	396,806	-30,000
PERSONNEL PROGRAMS	85,046	85,046	---
RESCUE AND RECOVERY SERVICES	35,447	35,447	---
SUBSISTENCE-IN-KIND	56,886	86,896	---
ARMS CONTROL	37,887	37,887	---
OTHER SERVICEWIDE ACTIVITIES	544,266	539,266	-5,000
OTHER PERSONNEL SUPPORT	33,239	33,239	---
CIVIL AIR PATROL CORPORATION	4,392	4,842	+250
BASE SUPPORT	153,640	109,820	-43,820
SECURITY PROGRAMS			
SECURITY PROGRAMS	786,659	785,859	---
SUPPORT TO OTHER NATIONS			
INTERNATIONAL SUPPORT	7,368	7,368	---
TOTAL, BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACT	4,444,278	4,407,463	-36,815

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
CLASSIFIED PROGRAMS UNDISTRIB. REDUCTIONS.............	---	-82,784	-82,784
GENERAL REDUCTION, DBOF..................................	-941,400	-841,400	---
GENERAL REDUCTION, NATIONAL DEFENSE STOCKPILE FUND....	-200,000	-200,000	---
REDUCTIONS FOR BRAC III..................................	-84,000	-84,000	---
TRANSFER TO INSPECTOR GENERAL..........................	---	-12,700	-12,700
AUTOMATIC DATA PROCESSING..............................	---	-25,000	-25,000
INVENTORIES..	---	-122,650	-122,650
TOTAL, OPERATION AND MAINTENANCE, AIR FORCE.........	18,582,984	18,305,447	-277,537
(BY TRANSFER - DBOF)............................	(841,400)	(841,400)	---
(BY TRANSFER - NATIONAL DEFENSE STOCKPILE FUND).	(200,000)	(200,000)	---
TOTAL FUNDS AVAILABLE............................	(19,724,384)	(19,448,847)	(-277,537)

Adjustments to the budget activities that are of special interest are shown below:

	Thousands
Budget Activity 1: Operating Forces:	
Readiness Enhancements/OPTEMPO	+110,000
Manual Osmosis Desalinators	+4,000
Mothball 22 B–52s	−103,040
BOS/DBOF	−4,039
Budget Activities 3: Training and Recruiting:	
BOS/DBOF	−9
Budget Activities 4: Admin & Servicewide Activities:	
Depot Maintenance Backlog	+50,000
Gen Purpose Communications	−30,000
Fuel Cells Installation	+2,000
Use of Natural Gas Technology	+2,600
B–52 Mothball	+2,620
Arlington Cemetery Renovation	+9,535
Consultants Advisory Assistance Svcs	−25,000
Pentagon Renovation	−3,820
Hamilton AFB Cleanup	−5,000

B–52 FLEET

The Committee recommends reducing the B–52 Fleet by 22 aircraft by the end of fiscal year 1994. The budget request has been reduced by $103,040,000 to reflect those savings. An additional $2,650,000 has been provided for the mothballing process.

WOMEN IN MILITARY SERVICE FOR AMERICA MEMORIAL

The Committee agrees to provide an additional $9,538,000 to make the necessary repairs, restoration and preservation of the entrance structure and adjoining areas of the Arlington National Cemetery in conjunction with the construction of the Women in Military Service for America Memorial.

HOMESTEAD AFB HURRICANE DAMAGE REPAIRS

The Committee understands that the Air Force may have been unable to initiate the necessary repairs for facilities damaged by Hurricane Andrew during fiscal year 1993. However, the Air Force has assured the Committee that it intends to complete those repairs during fiscal year 1994.

NELLIS AFB

The Committee is aware of a recent internal review conducted by the Air Force and the recommendation that savings could be achieved by consolidation of contracts at Nellis AFB. In view of the history of the evolution of the Nellis training ranges and the engineering accomplishments in the last ten years, the Committee does not believe that consolidation is in the best interests of the Air Force. Instead, the Committee believes realigning the contracts and eliminating the duplication in engineering services would achieve similar cost savings and at the same time preserve the technical and engineering base instrumental in continuing the successful evolution of Nellis AFB as the only real time, fully integrated, state-of-the-art training range. The Committee strongly recommends that the Air Force consider this approach.

CIVIL AIR PATROL (CAP)

The Committee recognizes that the Department has again underfunded the Civil Air Patrol, and finds it necessary to provide additional funds. Additionally, a general provision is included in the bill that earmarks funds to operate the CAP.

The following table shows the breakout of funds to support the CAP:

[In thousands of dollars]

	Budget	Recommended	Difference
CAP-USAF:			
Military personnel	10,147	10,147	
Mission support (O&M)	4,340	4,340	
Subtotal	14,487	14,487	
CAP-Operations:			
SAR/DR	2,180	2,180	
Vehicle/equipment maint	400	400	
A/C maint	1,382	1,382	
Uniforms	200	260	+60
Cadet exchange	230	420	+190
Subtotal O&M	4,392	4,642	+250
Aircraft	2,543	3,643	+1,100
Vehicles	800	800	
Communications	194	194	
Subtotal procurement	3,537	4,637	+1,100
Counter-narcotics	2,000	2,400	+400
Total:			
CAP-USAF	14,487	14,487	
CAP-Operations	9,929	11,679	+1,750
Total	24,416	26,166	+1,750

INTELLIGENCE PROGRAMS

Reductions to Air Force intelligence programs are addressed in the classified report.

OPERATION AND MAINTENANCE, DEFENSE-WIDE

Fiscal year 1993 appropriation	$8,778,004,000
Fiscal year 1994 budget request	9,500,581,000
Committee recommendation	9,497,133,000
Change	−3,448,000

The Committee recommends an appropriation of $9,497,133,000 for Operation and Maintenance, Defense-Wide. The recommendation is an increase of $719,129,000 above the $8,778,004,000 in total obligational authority for fiscal year 1993. The Committee notes that the recommended level is $427,705,000 over the House authorized level of $9,069,428,000. This amount may not be obligated or expended until authorized by law. The following tables summarize the specific adjustments to the fiscal year 1994 request by individual agency or project:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
OPERATION AND MAINTENANCE, DEFENSEWIDE AGENCIES			
BUDGET ACTIVITY 1: OPERATING FORCES			
JOINT CHIEFS OF STAFF	343,702	343,702	---
SPECIAL OPERATIONS COMMAND	974,314	996,001	+21,687
TOTAL, BUDGET ACTIVITY 1: OPERATING FORCES	1,318,016	1,339,703	+21,687
BUDGET ACTIVITY 2: MOBILIZATION			
DEFENSE LOGISTICS AGENCY	154,200	154,200	---
TOTAL, BUDGET ACTIVITY 2: MOBILIZATION	154,200	154,200	---
BUDGET ACTIVITY 3: TRAINING AND RECRUITING			
DEFENSE ACQUISITION UNIV	104,517	74,000	-30,517
DEF BUSINESS MGT UNIV	3,842	3,200	-642
TOTAL, BUDGET ACTIVITY 3: TRAINING AND RECRUITING	108,359	77,200	-31,159
BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACTIVITIES			
ARMED FORCES INFO SVC	74,662	74,662	---
CORPORATE INFORMATION MGT	57,030	132,030	+75,000
CLASSIFIED AND INTEL	3,033,799	2,945,824	-87,975
DEFENSE CONTRACT AUDIT AG	355,375	355,375	---
DEFENSE INVESTIGATIVE SVC	186,640	186,640	---
DEFENSE LOGISTICS AGENCY	1,333,825	1,380,825	+47,000
DEFENSE LEGAL SVC AGENCY	6,841	6,841	---
DEFENSE MAPPING AGENCY	707,286	700,000	-7,286
DEFENSE NUCLEAR AGENCY	90,942	58,774	-32,168
FEDERAL ENERGY MGT PROGRAM	59,000	59,000	---
DOD DEPENDENTS EDUCATION	1,176,828	1,168,113	-8,715
DEFENSE SUPPORT ACTIVITIES	80,959	80,959	---
DEFENSE TECH SECURITY AG	40,198	8,435	-31,763
JOINT CHIEFS OF STAFF	104,295	102,835	-1,460
OFFICE OF ECONOMIC ADJUST	28,812	28,812	---
OFFICE OF SECDEF	383,972	362,472	-21,500
ON SITE INSPECTION AGENCY	114,888	74,888	-40,000
WASHINGTON HDQTS SVCS	171,654	155,920	-15,734
TOTAL, BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACT	8,007,006	7,882,405	-124,601
DBOF ADJUSTMENT - DCAA & DCMC	---	-87,300	-87,300
COMMUNICATIONS	---	-10,000	-10,000
DEFENSE CONVERSION	---	239,925	+239,925
CONSULTANTS ADVISORY ASSISTANCE SERVICES	---	-12,000	-12,000
REDUCTIONS FOR BRAC III	-87,000	-87,000	---
TOTAL, OPERATION & MAINTENANCE, DEFENSE-WIDE	9,500,581	9,497,133	-3,448

Adjustments within the budget activities are shown below:

	Thousands
Budget Activity 1: Operating Force:	
Special Operations Command:	
BOS/DBOF	−1,213
RC SOF force structure support	+22,900
Budget Activity 3: Training and Recruiting:	
Defense Acquisition University growth reduction	−30,517
Defense Business Management University growth reduction	−642
Budget Activity 4: Administration and Servicewide Activities:	
Corporate Information Management: Transfer from Services' Accounts	+75,000
Classified and Intelligence	−87,975
Defense Logistics Agency:	
Automated Document Conversion System	+20,000
PTAP	+25,000
Fuel Cells	+2,000
Defense Mapping System: Digital Production System	−7,286
Defense Nuclear Agency: Safeguard C prohibition/Johnston Atoll	−32,168
DOD Dependents Education:	
Guam Schools	+2,000
Real Property Maintenance	+10,000
Base support test	−715

Department of Defense School System	−20,000
Defense Technical Security Agency:	
Travel/Administration	−500
Counter-proliferation Fund	−31,263
Joint Chiefs of Staff: Pentagon Renovation	−1,460
Office of Secretary of Defense:	
Natural gas demonstration	+1,500
Transfer of CALS to Research and Development	−23,000
On Site Inspection Agency	−40,000
Washington Headquarters Service:	
Automation enhancements	−11,654
Pentagon renovation	−4,080

COMMITTEE RECOMMENDATIONS

SPECIAL OPERATIONS FORCES (SOF)

Reserve Components (RC) SOF Units. The budget request proposes reducing the RC SOF force structure. The Committee disagrees with this proposal and directs the Department to restore the RC SOF units. The Committee has provided an additional $22.9 million to support the RC SOF units restored in SOF force structure.

Base Operations Support, Ft. Bragg. The Committee directs USSOCOM to include in its fiscal year 1995 budget request funds required to reimburse Ft. Bragg for the base operations support provided by Ft. Bragg to U.S. Army Special Operations Forces assigned at Ft. Bragg. The appropriate amount should be mutually agreed by USASOC and Ft. Bragg.

NATURAL GAS DEMONSTRATION

The Committee recommends an additional $1,500,000 for the Office of the Undersecretary of Defense, Acquisition, for natural gas vehicle refueling infrastructure planning for military bases.

DEFENSE LOGISTICS AGENCY

The Committee recommends an additional $20,000,000 only for an Automated Document Conversion System for the Defense Logistics Agency.

DEFENSE FUEL SUPPLY POINT

The Committee directs the Department to submit a report that includes estimated costs, including environmental clean up costs, to close and relocate all activities at the Defense Fuel Supply Point at Norwalk, California. The report shall also include acceptable and alternative sites to relocate these activities. The report shall be submitted to the Committees on Appropriations of the House and Senate no later than March 30, 1994.

DEFENSE PERSONNEL SUPPORT COMMAND

The Committee directs the Defense Procurement Agency to increase its purchases of Jumbo, Colossal and Super Colossal ripe olives in future solicitations for ripe olive purchases.

DEFENSE NUCLEAR AGENCY

The Committee recommends eliminating all funding for a program known as Safeguard C. This program was begun in 1963 after ratification of the Threshold Test Ban Treaty in order to provide the United States with a contingent capability to resume nuclear testing in the atmosphere, space, or the oceans. This program is no longer needed at Johnston Atoll, and accordingly the Committee reduces the Defense Nuclear Agency's funding request by $32,168,000, and directs that the Army become executive agent for Johnston Atoll for other non-Safeguard C activities. In addition, the Committee has included bill language ensuring that no funds are spent on Safeguard C activities.

SCHOOLS ON MILITARY INSTALLATIONS

The Committee in its report on the Fiscal Year 1993 Defense Appropriations Act expressed its continued concern with respect to the deplorable physical state of educational facilities on military installations owned by the federal government and operated by local education agencies. The report directed the Department, in cooperation with the Department of Education, to provide a report on plans to address this issue in order to assure quality educational opportunities for military dependents.

The Executive Branch has again failed to respond to this concern and develop a priority program to correct this problem. Therefore, the Committee directs that not less than $10,000,000 provided for Operation and maintenance accounts be utilized to bring federally owned education facilities on military installations up to acceptable health and safety standards. The Committee directs that priority be given to facilities operated by local education agencies identified in the joint study of the Department of Defense and Education directed by Section 2726 of Public Law 99–661 as having the highest estimated cost of problem, with preference to those local education agencies serving multiple major military installations.

The Committee further directs that the Department undertake appropriate actions to transfer ownership of facilities brought to appropriate health and safety standards to the local education agencies that operate them.

DEFENSE TECHNOLOGY SECURITY ADMINISTRATION (DTSA)

The Congress reduced funding for DTSA in fiscal year 1993 due to an internal Department of Defense Inspector General (DODIG) report which identified major systemic weaknesses in DTSA's organization. Congress directed the Department to expeditiously address all DODIG concerns and quickly implement corrective actions. In October 1992, Washington Headquarters Services stated in a report of DTSA management that "DTSA had internal conflicts associated with the stress of an uncertain and hazy mission; a managerial staff that was unaware of the concerns of its employees; and an organizational structure that inhibited constructive communications, collaborative working relationships, and timely work flow."

The fiscal year 1994 President's budget request proposes an increase of 399 percent for DTSA even though these concerns have

not yet been addressed. While the Department maintains this increased funding is not for DTSA, even though it is included in DTSA's budget request, the Committee believes it would be premature to increase DTSA's budget at this time due to the magnitude of problems addressed by the Department's Inspector General and Washington Headquarters Services and therefore has recommended holding DTSA to its fiscal year 1993 level of effort. In addition, the Committee supports the $500,000 reduction for travel, per diem, and administration as proposed by the House Armed Services Committee.

DEFENSE CONVERSION

The Committee recommends $239.9 million for defense conversion projects. Additional information can be found under the title, "Defense Conversion."

ON-SITE INSPECTION AGENCY

Based upon slippages in treaty inspection requirements, the Committee has included a reduction of $40,000,000 for the On-Site Inspection Agency.

ADMIRAL NIMITZ MUSEUM

The Committee requests the Department to provide assistance in the expansion of the Admiral Nimitz Museum to honor those men and women who fought in the Pacific during World War II.

INTELLIGENCE PROGRAMS

Reductions to Defense Agency intelligence programs are addressed in the classified report.

OPERATION AND MAINTENANCE, ARMY RESERVE

Fiscal year 1993 appropriation	$1,038,525,000
Fiscal year 1994 budget request	1,107,800,000
Committee recommendation	1,115,095,000
Change	+7,295,000

The Committee notes that the recommended level is $19,505,000 over the House authorized level of $1,095,590,000. This amount may not be obligated or expended until authorized by law. The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
OPERATION AND MAINTENANCE, ARMY RESERVE			
BUDGET ACTIVITY 1: OPERATING FORCES			
MISSION OPERATIONS			
BASE SUPPORT	235,794	225,089	-10,705
DEPOT MAINTENANCE	42,097	42,097	---
RECRUITING AND RETENTION	32,785	32,785	---
TRAINING OPERATIONS	684,066	702,066	+18,000
TOTAL, BUDGET ACTIVITY 1: OPERATING FORCES	994,742	1,002,037	+7,295
BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACTIVITIES			
ADMINISTRATION AND SERVICEWIDE ACTIVITIES			
INFORMATION MANAGEMENT	24,460	24,460	---
PUBLIC AFFAIRS	399	399	---
PERSONNEL ADMINISTRATION	45,339	45,339	---
STAFF MANAGEMENT	42,860	42,860	---
TOTAL, BUDGET ACTIVITY 4 ADMIN & SERVICEWIDE ACT	113,058	113,058	---
TOTAL, OPERATION AND MAINTENANCE, ARMY RESERVE	1,107,800	1,115,095	+7,295

Adjustments to the budget activities that are of special interest are shown below:

	Thousands
Budget Activity 1: Operating Forces:	
Readiness Enhancement/OPTEMPO	+$18,000
BOS/DBOF	−12,210
Marcus Hook	+1,505

ARMY RESERVE FACILITY, MARCUS HOOK, PA

The Committee denies the funds of approximately $250,000 to operate and maintain the Army Reserve Facility in Marcus Hook, Pennsylvania. Units assigned at Marcus Hook should be relocated within a one-hundred mile radius of Marcus Hook or incorporated with the parent reserve or active unit, as soon as it is feasible. The Committee has provided $1,750,000 for this move.

OPERATION AND MAINTENANCE, NAVY RESERVE

Fiscal year 1993 appropriation	$850,745,000
Fiscal year 1994 budget request	773,800,000
Committee recommendation	807,200,000
Change	+33,400,000

The Committee notes that the recommended level is over $31,400,000 over the House authorized level of $775,800,000. This amount may not be obligated or expended until authorized by law. The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
OPERATION AND MAINTENANCE, NAVY RESERVE			
BUDGET ACTIVITY 1: OPERATING FORCES			
RESERVE AIR OPERATIONS			
MISSION AND OTHER FLIGHT OPERATIONS	278,175	298,575	+20,400
FLEET AIR TRAINING	25,293	25,293	---
INTERMEDIATE MAINTENANCE	16,449	16,449	---
AIR OPERATION AND SAFETY SUPPORT	1,547	1,547	---
AIRCRAFT DEPOT MAINTENANCE	64,152	64,152	---
AIRCRAFT DEPOT OPS SUPPORT	528	528	---
BASE SUPPORT	111,459	111,459	---
RESERVE SHIP OPERATIONS			
MISSION AND OTHER SHIP OPERATIONS	40,757	53,757	+13,000
INTERMEDIATE MAINTENANCE	23,545	23,545	---
SHIP DEPOT MAINTENANCE	36,175	36,175	---
RESERVE COMBAT OPERATIONS SUPPORT			
COMBAT COMMUNICATIONS	608	608	---
COMBAT SUPPORT FORCES	24,560	24,560	---
BASE SUPPORT	58,467	58,467	---
RESERVE WEAPONS SUPPORT			
WEAPONS MAINTENANCE	7,656	7,656	---
TOTAL, BUDGET ACTIVITY 1: OPERATING FORCES	689,371	722,771	+33,400
BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACTIVITIES			
ADMINISTRATION AND SERVICEWIDE ACTIVITIES			
ADMINISTRATION	7,467	7,467	---
CIVILIAN MANPOWER AND PERSONNEL MANAGEMENT	2,699	2,699	---
MILITARY MANPOWER AND PERSONNEL MANAGEMENT	28,283	28,283	---
OTHER PERSONNEL SUPPORT	1,852	1,852	---
SERVICEWIDE COMMUNICATIONS	19,006	19,006	---
BASE SUPPORT	22,278	22,278	---
COMBAT/WEAPONS SYSTEMS	2,744	2,744	---
TOTAL, BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACT	84,429	84,429	---
TOTAL, OPERATION AND MAINTENANCE, NAVY RESERVE	773,800	807,200	+33,400

Adjustments to the budget activities that are of special interest are shown below:

Budget Activity 1: Operating Forces:	*Thousands*
P3 Squadrons	+$20,000
COOP Support	+2,000
Readiness Enhancement/OPTEMPO	+11,000

NAVAL RESERVE PERSONNEL CENTER

The Naval Reserve Personnel Center is already colocated with the operations of the Commander, Naval Reserve Forces. Many of the center's operations are managed and most of its funding is provided by the Naval Reserve. Therefore, the Committee has included bill language placing operational control of the Naval Reserve Personnel Center, including all functions and responsibilities, under the command and control of the Commander of the Naval Reserve.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

Fiscal year 1993 appropriation	$77,870,000
Fiscal year 1994 budget request	75,100,000
Committee recommendation	86,855,000
Change	+11,755,000

The Committee notes that the recommended level is over $75,050,000 over the House authorized level of $11,805,000. This

amount may not be obligated or expended until authorized by law. The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
OPERATION AND MAINTENANCE, MARINE CORPS RESERVE			
BUDGET ACTIVITY 1: OPERATING FORCES			
MISSION FORCES			
TRAINING	12,649	24,349	+11,700
MATERIAL READINESS	17,584	17,584	---
BASE SUPPORT	18,070	18,020	-50
DEPOT MAINTENANCE	1,754	1,754	---
TOTAL, BUDGET ACTIVITY 1: OPERATING FORCES	50,057	61,707	+11,650
BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACTIVITIES			
ADMINISTRATION AND SERVICEWIDE ACTIVITIES			
RECRUITING AND ADVERTISING	7,197	7,197	---
SPECIAL SUPPORT	2,792	2,792	---
SERVICEWIDE TRANSPORTATION	4,127	4,127	---
ADMINISTRATION	5,846	5,951	+105
OTHER BASE SUPPORT	5,081	5,081	---
TOTAL, BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACT	25,043	25,148	+105
TOTAL, OPERATION AND MAINT, MARINE CORPS RESERVE	75,100	86,855	+11,755

Adjustments to the budget activities that are of special interest are shown below:

	Thousands
Budget Activity 1: Operating Forces:	
Readiness Enhancement/OPTEMPO	$3,800
Force Structure Restoration	+7,900
BOS/DBOF	−50
Budget Activity 4: Admin & Servicewide Activities:	
Environmental Compliance Ofc, New Orleans	105

ENVIRONMENTAL COMPLIANCE OPERATIONS

The Committee has provided $105,000 above the request for additional civilian personnel support for the Marine Corps Reserve environmental compliance operations.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

Fiscal year 1993 appropriation	$1,195,024,000
Fiscal year 1994 budget request	1,354,578,000
Committee recommendation	1,370,222,000
Change	+15,644,000

The Committee notes that the recommended level is over $1,354,578,000 over the House authorized level of $15,644,000. This amount may not be obligated or expended until authorized by law. The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
OPERATION AND MAINTENANCE, AIR FORCE RESERVE			
BUDGET ACTIVITY 1: OPERATING FORCES			
AIR OPERATIONS			
AIRCRAFT OPERATIONS	886,326	901,970	+15,644
MISSION SUPPORT OPERATIONS	33,351	33,351	---
BASE SUPPORT	232,316	232,316	---
DEPOT MAINTENANCE	145,231	145,231	---
TOTAL, BUDGET ACTIVITY 1: OPERATING FORCES	1,297,224	1,312,868	+15,644
BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACTIVITIES			
ADMINISTRATION AND SERVICEWIDE ACTIVITIES			
ADMINISTRATION	25,679	25,679	---
MILITARY MANPOWER AND PERSONNEL MANAGEMENT	19,346	19,346	---
RECRUITING AND ADVERTISING	6,825	6,825	---
OTHER PERSONNEL SUPPORT	4,936	4,936	---
AUDIOVISUAL	568	568	---
TOTAL, BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACT	57,354	57,354	---
TOTAL, OPERATION AND MAINTENANCE, AIR FORCE RESERVE	1,354,578	1,370,222	+15,644

Adjustments to the budget activities that are of special interest are shown below:

Budget Activity 1: Operating Forces:	*Thousands*
Readiness Enhancement/OPTEMPO	+$13,760
WC-130 Weather Recon Support	+1,884

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

Fiscal year 1993 appropriation	$2,255,623,000
Fiscal year 1994 budget request	2,218,900,000
Committee recommendation	2,272,018,000
Change	+53,118,000

The Committee notes that the recommended level is over $48,763,000 over the House authorized level of $2,223,255,000. This amount may not be obligated or expended until authorized by law. The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD			
BUDGET ACTIVITY 1: OPERATING FORCES			
MISSION OPERATIONS			
TRAINING OPERATIONS	1,628,791	1,685,791	+57,000
RECRUITING AND RETENTION	27,391	27,391	---
MEDICAL SUPPORT	11,997	11,997	---
DEPOT MAINTENANCE	113,674	113,674	---
BASE SUPPORT	256,182	252,300	-3,882
TOTAL, BUDGET ACTIVITY 1: OPERATING FORCES	2,038,035	2,091,153	+53,118
BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACTIVITIES			
ADMINISTRATION AND SERVICEWIDE ACTIVITIES			
INFORMATION MANAGEMENT	60,862	60,862	---
PUBLIC AFFAIRS	1,537	1,537	---
PERSONNEL ADMINISTRATION	81,250	81,250	---
STAFF MANAGEMENT	37,216	37,216	---
TOTAL, BUDGET ACTIVITY 4 ADMIN & SERVICEWIDE ACT	180,865	180,865	---
TOTAL, OPERATION AND MAINT, ARMY NATIONAL GUARD	2,218,900	2,272,018	+53,118

Adjustments to the budget activities that are of special interest are shown below:

Budget Activity 1: Operating Forces:	*Thousands*
OPTEMPO Shortfall	+44,000
LA Unified School District	+10,000
Urban Youth Prog/Youth Conserv Corps Camp	+3,000
Rhode Is Electronic Tandem Network	+475
BOS/DBOF	−4,355

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

Fiscal year 1993 appropriation	$2,493,689,000
Fiscal year 1994 budget request	2,657,233,000
Committee recommendation	2,695,233,000
Change	+38,000

The Committee notes that the recommended level is $30,000,000 over the House authorized level of $2,665,233,000. This amount may not be obligated or expended until authorized by law. The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
OPERATION AND MAINTENANCE, AIR NATIONAL GUARD			
BUDGET ACTIVITY 1: OPERATING FORCES			
AIR OPERATIONS			
AIRCRAFT OPERATIONS	1,769,006	1,805,006	+36,000
MISSION SUPPORT OPERATIONS	311,105	313,105	+2,000
BASE SUPPORT	288,995	288,995	---
DEPOT MAINTENANCE	279,170	279,170	---
TOTAL, BUDGET ACTIVITY 1: OPERATING FORCES	2,648,276	2,685,276	+38,000
BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACTIVITIES			
SERVICEWIDE ACTIVITIES			
ADMINISTRATION	4,503	4,503	---
RECRUITING AND ADVERTISING	4,454	4,454	---
TOTAL, BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACT	8,957	8,957	---
TOTAL, OPERATION AND MAINT, AIR NATIONAL GUARD	2,657,233	2,695,233	+38,000

Adjustments to the budget activities that are of special interest are shown below:

Budget Activity 1: Operating Forces:	*Thousands*
C–130 Support, Louisiana & So. Carolina	+3,000
Readiness Enhancements/OPTEMPO	+33,000
Urban Youth Prog/Youth Conserv Corps Camp	+2,000

C–130H OPERATIONS

The Committee has provided $3,000,000 above the request for the Air National Guard operations and maintenance account. The Committee directs that these funds be used only for the operations and maintenance for the C–130H operational support aircraft located in South Carolina and Louisiana. The Committee directs the National Guard not to transfer these C–130 aircraft from their assignments during fiscal year 1994 and beyond.

NATIONAL BOARD FOR THE PROMOTION OF RIFLE PRACTICE, ARMY

Fiscal year 1993 appropriation	$2,700,000
Fiscal year 1994 budget request	2,483,000
Committee recommendation	2,483,000
Change	0

The Committee recommends an appropriation of $2,483,000 for the National Board for the Promotion of Rifle Practice, Army. The Committee agrees that this is a cost-effective move and supports the Army's decision to again include this youth-oriented, civilian marksmanship program in its fiscal year 1994 budget request.

COURT OF MILITARY APPEALS, DEFENSE

Fiscal year 1993 appropriation	$5,900,000
Fiscal year 1994 budget request	6,055,000

Committee recommendation	5,855,000
Change	−200,000

The Committee recommendation includes a reduction for administration, per diem, and travel as proposed by the House Armed Services Committee.

ENVIRONMENTAL RESTORATION, DEFENSE

Fiscal year 1993 appropriation	$1,199,700,000
Fiscal year 1994 budget request	2,309,400,000
Committee recommendation	1,716,800,000
Change	−592,600,000

The Committee recommends $1,716,800,000 to fund legally mandated environmental restoration of Department-contaminated property. This is a reduction of $592,600,000 from the President's budget request, but an increase of $517,100,000 above the $1,199,700,000 in total obligational authority for fiscal year 1993. Included in the Committee's recommendation is an additional $7,400,000 for two projects not included with the President's budget request: $2,800,000 for Beale Air Force Base, California; and $4,600,000 for Castner Range at Fort Bliss, Texas. This program is more fully addressed in the Highlights of Committee Recommendations section of this report under the heading "DOD Environmental Security Programs".

HUMANITARIAN ASSISTANCE

Fiscal year 1993 appropriation	$28,000,000
Fiscal year 1994 budget request	0
Committee recommendation	15,000,000
Change	+15,000,000

The Committee recommendation includes $15,000,000 for humanitarian assistance, only partially supporting the $48,000,000 request in the President's budget in a newly created account called Global Cooperative Initiatives, Defense-Wide. The Committee addresses this new account separately. However, since this Committee, along with the House Armed Services Committee, established this account in 1986, the Committee believes that it should continue to be used only for its originally intended purpose. Therefore, the Committee directs that of the $15,000,000 appropriated, $13,000,000 is to be used only for the Afghan Relief Program, and $2,000,000 is to be used only for the transportation of non-lethal excess property to sub-Saharan Africa. Particularly, the Committee encourages the Department to send urgently needed medical supplies and civil engineering equipment to sub-Saharan Africa.

SUPPORT FOR INTERNATIONAL SPORTING COMPETITIONS, DEFENSE

Fiscal year 1993 appropriation	....
Fiscal year 1994 budget request	....
Committee recommendation	$6,000,000
Change	+6,000,000

The Committee recommends an appropriation of $6,000,000 for support of international sporting competitions. These funds will be used for expenses of logistical support and personnel services pro-

vided by the Department of Defense for the World University Games, the 1996 Games of the XXVI Olympiad and the World Cup USA 1994. The Committee has recommended a new appropriation account in lieu of individual appropriations as in previous years. Of the monies appropriated for fiscal year 1994, $2,000,000 is for the 1996 Games of the XXVI Olympiad. The Committee is aware of the existence of unobligated and unexpended monies from prior year appropriations for these Games, and therefore recommends to extend the availability of the fiscal year 1992 and fiscal year 1993 prior year unobligated balances to fiscal year 1994.

The Committee directs that the fiscal year 1995 budget request shall include an exhibit, by event, on the fiscal year 1992 and 1993 actual expenditures, and the fiscal year 1994 and 1995 estimate of expenditures. The budget exhibit should also include a breakout, by event, of the types of expenditures DoD is providing, such as communications, security, transportation, etc.

The Department is directed to follow normal reprogramming procedures for funds appropriated in this account.

GLOBAL COOPERATIVE INITIATIVES, DEFENSE-WIDE

Fiscal year 1993 appropriation	$0
Fiscal year 1994 budget request	448,000,000
Committee recommendation	383,000,000
Change	−65,000,000

The Committee notes that the recommended level is not authorized. This amount may not be obligated or expended until authorized by law.

The Committee agrees to provide $383,000,000 for peacekeeping, humanitarian assistance and disaster relief missions. Additional funds have been provided under the heading "Humanitarian Assistance" under Title II for humanitarian relief for Afghanistan and Cambodia. The Committee denies the request for $50 million for the Promotion of Democracy initiative. This initiative falls under the International Military Education and Training (IMET) program and should be addressed by the Foreign Operations Appropriations Subcommittee.

The Committee has included bill language that require the Department to notify the Committees on Appropriations and Armed Services prior to committing U.S. military personnel in carrying out missions funded under this account. Additional information is found under the heading, "Global Cooperative Initiatives" found elsewhere in the Report.

FORMER SOVIET UNION THREAT REDUCTION

Fiscal year 1993 appropriation	0
Fiscal year 1994 budget request	$400,000,000
Committee recommendation	400,000,000
Change	0

In previous years, the Department requested transfer authority to finance U.S. support for demilitarization programs in the former Soviet Union. In fiscal year 1994, a direct appropriation of $400,000,000 is requested for this purpose.

The Committee has fully funded this effort and requests that the Department provide periodic reports on actual and planned obligations.

EXTENSION OF TRANSFER AUTHORITY

The Department requested that the transfer authorities granted last year be extended in a new general provision. Since a substantial portion of the $800,000,000 in transfer authority has already been used, and since a new direct appropriation of $400,000,000 is being included for fiscal year 1994, the Committee believes that it is not necessary to include such an extension of transfer authority.

INCIDENTAL IMPACT ON WEAPONS EXPORT AND PRODUCTION

The Committee believes that it is clearly in the national interest of the United States to assist the countries of the former Soviet Union (FSU) in reducing their arsenal of weapons. To that end, every effort should be made to help convert FSU manufacturing capability and technical expertise from military to civilian applications. However, the Committee is concerned that in some instances it appears that these funds could possibly be used inadvertently to subsidize modernization of the FSU weapons manufacturing and export capabilities. For example, to the extent that these funds are properly used to assist in the destruction of older weapons, nuclear or conventional, it would be tragic if the incidental impact is to make additional technical expertise and industrial capability available for production of other weapons either for retention or export.

The Committee, therefore, directs that none of the $400,000,000 being appropriated in this Act is available for any project for which it appears that such an "incidental" modernization or export effect may result unless the Secretary of Defense personally certifies in writing to the Congress that such an "incidental" effect does not permit: (a) the modernization or increase in production of any weapon or system that may be adversely used against the national interests of the United States or its allies; or (b) an increase or continued trafficking in the export of weapons or systems to any country which might result in an adverse impact on regional stability or the interests of the United States or its allies.

Finally, it is also clearly stipulated that the funds being provided may be used to buy outright any weapon or system from any country of the FSU if such a direct purchase would (a) provide a significant roduction in the military capability of that country; (b) not be offset by the production or acquisition of a replacement system; or (c) might otherwise be available for export resulting in an adverse impact either on regional stability or on the interests of the United States or its allies.

GEORGE MARSHALL CENTER

It appears that the Department of Defense is currently using operation and maintenance funding to support the costs associated with attendees at the Marshall Center from the countries of the former Soviet Union. While the Committee fully endorses the Marshall Center operations, funding for participants from the FSU

should be provided from this appropriation and not from funds provided for the readiness of U.S. military forces.

NATIONAL ACADEMY OF SCIENCES

The National Academy of Sciences has access to technical and linguistic expertise in the U.S. that has already developed extensive contacts within the technological infrastructure in the countries of the former Soviet Union. By reserving a small portion of the $400 million fiscal year 1994 request, the NAS could continue to provide linguistically capable technical experts and grants to: (a) serve as conduits to the U.S.; (b) match individuals and institutes with critical weapons-related skills in the FSU with meaningful peaceful commercial and academic projects in the U.S.; and (c) with the assistance of NATO countries with cultural and linguistic commonality in the region, develop an ongoing relationship with the central Asian republics of the FSU in order to help prevent technology transfer to potentially hostile countries in the Middle East.

The Committee is therefore directing that a minimum of $10,000,000 be reserved for the National Academy of Sciences for this effort. In addition, the Secretary is requested to work with the Academy to provide a plan not only delineating precisely how these reserved funds will be obligated, but also address the extent to which any additional portion of the $400,000,000 might be effectively used by the Academy.

MULTILATERAL NUCLEAR SAFETY INITIATIVE

Last year the Committee required that funds available for demilitarization of the former Soviet Union also be available for implementation of the Multilateral Nuclear Safety Initiative announced by the Administration on May 23, 1992 in Lisbon, Portugal. The Committee continues to endorse utilization of these funds to terminate operation of unsafe civilian reactors and to assure that any continued operations are conducted with as little potential for catastrophic accident as possible.

STUDY OF ECONOMIC DEVELOPMENT

Within available funds, the Department is encouraged to provide a grant for the establishment of a United States-based Center for the Study of the Economy and Economic Development in the former Soviet Union. This center should be a cooperative effort between the countries of the former Soviet Union, an American institution of higher education, the private sector, and other American government entities. The establishment of this facility should provide the opportunity for the training of government and private sector individuals from the United States and the former Soviet Union on a revolving basis. Preference in the award of this grant shall be given to an entity that has illustrated the ability to assemble such a partnership and has a track record of experience in the economy of the former Soviet Union.

TITLE III

PROCUREMENT

Estimates and Appropriation Summary

The fiscal year 1994 Department of Defense procurement budget totals $45,067,328,000. The accompanying bill recommends $45,654,493,000 in new budget authority. The total amount recommended is an increase of $587,165,000 above the fiscal year 1994 budget estimate, and is $9,721,438,000 below the total provided for fiscal year 1993. The Committee recommendation includes $1,178,100,000 for National Guard and Reserve Equipment, all of which was unbudgeted. The table below summarized the budget estimates and the Committee's recommendations:

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	Budget request QTY	Budget request AMOUNT	Committee recommended QTY	Committee recommended AMOUNT	Change from request QTY	Change from request AMOUNT
SUMMARY						
ARMY:						
AIRCRAFT		1,110,436		1,726,164		+615,728
MISSILES		1,043,550		1,126,110		+82,560
WEAPONS, TRACKED COMBAT VEHICLES		874,346		892,709		+18,363
AMMUNITION		734,427		620,787		-113,640
OTHER		3,051,281		2,904,933		-146,348
TOTAL, ARMY		6,814,040		7,270,703		+456,663
NAVY:						
AIRCRAFT		6,132,604		5,664,216		-468,388
WEAPONS		3,040,260		2,808,986		-231,274
SHIPS		4,294,742		5,397,102		+1,102,360
OTHER		2,967,974		2,980,815		+12,841
MARINE CORPS		483,464		527,754		+44,290
TOTAL, NAVY		16,919,044		17,378,873		+459,829
AIR FORCE:						
AIRCRAFT		7,300,965		6,887,201		-413,764
MISSILES		4,361,050		3,845,354		-515,696
OTHER		7,942,065		7,336,918		-605,147
TOTAL, AIR FORCE		19,604,080		18,069,473		-1,534,607

(IN THOUSANDS OF DOLLARS)

	Budget request QTY	Budget request AMOUNT	Committee recommended QTY	Committee recommended AMOUNT	Change from request QTY	Change from request AMOUNT
NATIONAL GUARD AND RESERVE EQUIPMENT		---		1,178,100		+1,178,100
DEFENSE AGENCIES		1,730,164		1,557,344		-172,820
DEFENSE PRODUCTION ACT PURCHASES		---		200,000		+200,000
TOTAL PROCUREMENT		45,067,328		45,654,493		+587,165

Procurement in DBOF

Last year, Congress forbade the Department of Defense from implementing a proposal to place the procurement of ammunition into the Defense Business Operations Fund (DBOF). The statement of managers accompanying the conference report made it clear that any changes to current practices for budgeting for procurement would not be tolerated by the Congress. The statement specifically noted rumors concerning putting sonobuoy procurement into

DBOF. These instructions were ignored; the fiscal year 1994 budget proposes starting sonobuoy procurement in DBOF, although no statement of these intentions is included in any budget documentation. The Committee's intentions have not changed and the budget proposal concerning sonobuoys is reversed in the Committee bill by continuing to fund sonobuoy procurement in Other Procurement, Navy. In addition, the bill includes a general provision (Sec. 8097) which prohibits inclusion of any other item or procurement in the DBOF which is currently funded in procurement appropriations.

It is the Committee's direction that in fiscal year 1995 and beyond, the Department of Defense shall not budget in the supply management business area of DBOF any item which was classified as an end item and funded in a procurement appropriation in the 1994 appropriation act.

Munitions Industrial Base

The Committee is concerned about the deteriorating industrial base used for the development and manufacture of munitions. While other portions of the Defense industrial base are receiving attention and management as Defense requirements and budgets decrease, our ammunition industrial base has been largely neglected, sustained only by today's minimal production requirements. This is particularly disturbing since munitions are a consumable commodity whose availability is essential for peacetime training as well as for contingency operations. Like spare parts, ammunition is one of the few procurement items which is also considered a key component of readiness. Absent immediate and effective action, we face the prospect of losing a national asset vital to our security.

Since the Viet Nam War, the ammunition industrial base has changed dramatically. Formerly, the base consisted of large, government-owned manufacturing complexes designed to produce massive quantities of technologically unsophisticated munitions to fight a global war. Rapid advances in munitions technology have provided both dramatic increases in range, accuracy, and lethality of ammunition, and the advent of "smart" munitions. These advances have caused a fundamental shift in the base to a status where deployment, system integration, and production is often found in the non-government industrial sector. Because of the more complex technology involved and the specialized nature of many of the munitions being produced, ammunition procurement during the 1980's was characterized by relatively small production runs of complex items at relatively high unit costs. This trend will continue in the future, with the added dimension that increasing munitions sophistication and changed world conditions will cause inventory requirements to decrease further.

Clearly the existing ammunition industrial base needs to be greatly reduced. The challenge is to rationalize this downsizing so that the resulting capability is based on realistic current and future requirements. The existing base is so diverse and competitive that "self-rationalization" is an unrealistic expectation. A rationally sized ammunition industrial base will result only if the downsizing is managed in accordance with a well-conceived plan jointly devel-

oped by government and industry. Unfortunately, no plan yet exists.

The individual services have cut back ammunition procurement budgets in accordance with current calculations of munition inventory requirements. As a consequence, the current budget will cause production lines to be terminated for a variety of munitions without considering production base implications. These munitions include general purpose bombs, ship self-defense ammunition, MLRS rockets, most mortar ammunition types, and all conventional artillery rounds. While plant and equipment may be maintained in a "layaway" status, the skilled workforces supporting production will disappear. The services seem to have overly optimistic assumptions concerning the time and expense required to reassemble the workforces and reopen production lines to replenish munitions after a future conflict or to reconstitute the base if required in the future.

The Committee commends the Department for its initiative in bringing together a working group of Department and industry experts to begin a study of this issue and expects the Under Secretary of Defense for Acquisition to take personal responsibility for this effort. The Committee anticipates that the group will develop a plan for the most cost-effective options for meeting current procurement requirements, maintaining replenishment capability, supporting peacetime training, minimizing peacetime operating costs, and retaining the technical, engineering, and manufacturing expertise necessary for future munitions development, production, and support.

The Committee expects that the plan will go far beyond simply calling for the manufacturing of more ammunition. The challenge is two-fold: (1) to identify the critical industrial elements required for a viable base and then determine how to cost-effectively maintain them and (2) to identify unneeded elements of the base and determine how best to dispose of them. The plan, therefore, should be based on consideration of the full range of options concerning all elements of the industrial base, including, but not limited to, conversion, dual-use, reconstitution, international sales, the establishment of centers of excellence and flexible manufacturing, and the allocation of both research and production funding between public and private elements of the base. The Committee expects the plan to consider the substantial investment the government has at stake in its government-owned facilities. In addition, the plan should reflect analysis and recommendations by the group concerning existing law and policy, specifically including anti-trust, that may impede or otherwise hamper the rational downsizing of the ammunition industrial base. The plan should represent the collective views of the Department and the current private/public munitions industrial base and should present budget and other recommendations for each year through fiscal year 1999. The plan may include recommendations for fiscal year 1994 reprogramming and/or fiscal year 1995 budget amendments. The Committee requests submission of the plan by the Under Secretary of Defense for Acquisition no later than March 1, 1994.

MUNITION INVENTORY OBJECTIVES

Defense Planning Guidance is issued to the services annually by the Office of the Secretary of Defense to serve as a basis upon which—among other things—to calculate equipment and associated industrial requirements. It is a basic building block for the modernization budget. The current Guidance makes significant changes from what has been in place for many years. Instead of envisioning a future conflict to be a global contingency centered in central Europe, the current Guidance addresses two smaller and shorter "regional contingencies". In addition, the new Guidance abandons the concept of "mobilizing" or "surging" production of items such as munitions as they are consumed in a future conflict. Instead, future "regional contingencies" will be fought with assets on hand or currently in production. When the conflict is over, the supplies will be replenished over a period of years.

The new Guidance has had a significant impact on the computed requirements for munitions and for the associated industrial base which manufactures them. The budget will force the closure of numerous production lines because current calculations show that the items they produce are already in satisfactory or surplus supply. While not necessarily disagreeing with the new Guidance, the Committee believes that a cautious approach should be taken. Once a production line is closed, it can take a long time to reconstitute it. The Department and industry do not always agree on how long that is. If a future war is to be fought on a "come as you are" basis, we need to be sure that sufficient munitions are on hand to win that war before production lines are shut down. Assumptions concerning consumption rates and the duration of the conflict are two examples of critical parameters that impact requirement calculations and budgets.

The Committee believes this issue needs further review and is requesting its Surveys and Investigations Staff to undertake such a review. Pending that review, the Committee has recommended funding for several munitions knowing that current calculations conclude that these items are unnecessary. The Committee believes that these recommendations provide necessary insurance against the possibility that the current calculations may be faulty.

CONTRACT ADMINISTRATION/AUDIT

The fiscal year 1994 budget request for procurement and RDT&E accounts included increases to pay for "Contract Administration/Audit". The increases of about $1.4 billion would be used to finance Defense Contract Audit Agency and Defense Contract Management Command services that are performed in support of programs under development or being procured. According to the Department of Defense, the proposed change represented a move toward mission budgeting. This concept is intended to portray total costs related to contract awards and administrative requirements by presenting support service funding for contracts in each appropriation.

The Committee does not believe such a presentation would necessarily lead to a greater understanding of the total cost of individual programs. In fact, the dispersion of these costs throughout the various appropriation accounts would tend to mask the picture of

expenses related to contract administration and audit, which can currently be displayed very clearly as part of the Operation and Maintenance, Defense Agencies budget request.

The Committee is also concerned that the proposed action would expand the Defense Business Operations Fund at a time when its management practices and financial operations are being justly criticized.

Therefore, the Committee recommends a net reduction of $1,383,900,000 spread among various procurement and RDT&E accounts and directs that Contract Administration/Audit remain a direct-funded function of the Operation and Maintenance, Defense-Agencies account.

Installation of Modifications

Prior to fiscal year 1990 the Department of Defense requested funding in the procurement accounts to buy equipment and kits to modify major platforms such as ships, aircraft, and tanks. The cost of installing the modifications were budgeted in the operation and maintenance accounts in subsequent fiscal years as required to support procurement deliveries.

During finalization of the fiscal year 1990 appropriations bill, the Department of Defense proposed that installation funding be transferred to the procurement accounts, thus becoming part of the equipment and kit procurement and leading to visibility of the total cost of the modifications. Additionally, this would have ensured that installation funds would be available when the equipment was available, whereas under previous practice the installation funding had to be appropriated at some date after the equipment procurement.

With submission of the fiscal year 1994 budget, the Department acknowledges that the change implemented in fiscal year 1990 has not worked and the Department proposes a partial return to the practices of the past. Specifically, the Department proposes that funding of installations remain in the procurement accounts but that the installation funding requested in any given year would not necessarily be required to install the equipment procured in that year.

The Committee believes this proposal runs counter to the original justification for shifting installation costs from the operation and maintenance accounts to the procurement accounts, since under this proposal total cost of the modifications would no longer be displayed in one year, a violation of the full funding policy for procurement accounts.

The Committee disagrees with the budget proposal to incrementally fund modification installation costs in the procurement account. The Committee directs that future budget submissions fund all modification installation costs either incrementally funded in the operation and maintenance account or fully funded in the procurement account, not a mixture of the two options as submitted with the current budget.

NATURAL GAS UTILIZATION EQUIPMENT

The Committee recommends $16,000,000 each for the Army, Navy, and Air Force for natural gas utilization equipment. This includes $10,000,000 to continue procurement of non-developmental item (NDI) 200 KW phosphoric acid natural gas fuel cells currently in production in the United States, and $6,000,000 for absorption, engine-driven, and desiccant natural gas cooling equipment. Of this total for cooling equipment $2,000,000 is specifically for demonstration of equipment based on newly developed domestic, gas fired heat pump technology. The Committee directs that these cooling equipment funds be made available for acquisition of source energy efficient cooling equipment, including emerging technologies that have been commercially available for less than two years. The Committee is continuing this initiative to exploit the availability of natural gas technologies that are now entering the market place, and continues this item as a matter of special interest.

Partly as a result of very significant Federal investment in the past, energy efficient and reliable natural gas utilization equipment is now in early stages of production and available to the Department of Defense (DOD). This equipment is energy efficient, reliable, and environmentally benign. Its use enhances DOD compliance with national and local environmental standards. It also enhances energy security and improves our trade balance, since the United States proccdures virtually all of the natural gas it uses.

Fuel cells are emerging as practical devices suitable for a variety of power generation requirements, including particular capabilities beneficial to DOD installations. They are truck transportable, environmentally clean, they operate quietly and unattended and require no water for power production or cooling. These features permit flexibility of site location on urban roof tops or in remote rural areas. Fuel cells also provide a no-break energy source for critical DOD power requirements. Use of natural gas cooling equipment enhances DOD environmental compliance efforts, reduces peak electric demand and the risk of brown-outs and black-outs, and saves on life-cycle operating costs.

NAVY SMALL CRAFT/BOAT PROGRAMS

The Committee has included a general provision directing the Navy to use available off-the-shelf non-developmental items in fulfilling its small craft and small boat requirements. The Committee has taken this action because of its concern that the Navy has been spending too much to develop items which provide little if any improvement to currently available off-the-shelf items.

PROCUREMENT OF HANDGUNS

The Committee recommends retention of a general provision (Sec. 8076) included in the fiscal year 1993 appropriation act prohibiting the procurement of handguns and handgun ammunition other than the 9mm Department of Defense standard. The Committee is aware of discussions currently underway between the Army and the Navy to resolve differences which made this provision necessary last year. If these differences can be resolved prior to conference on this bill, the conferees will consider deleting the

provision at that time. The Committee expects to be regularly informed on progress in this matter.

Launcher Rail Chaff Dispenser (LRCD)

The Committee has added $12,000,000 to the Navy's budget request only for continued procurement of the LAU–138/A launcher rail chaff dispenser (LRCD) system in fiscal year 1994; of which $8,000,000 will be added to the Aircraft Procurement, Navy Common ECM Equipment account for continued procurement of the LAU–138/A (LRCD), $2,500,000 will be added to the Other Procurement, Navy Airborne Expendable Countermeasures account for chaff and $1,500,000 in the Navy Research and Development program will be used for the continued adaptation and integration of the LAU–138/A on other Navy/USMC tactical aircraft.

AIRCRAFT PROCUREMENT, ARMY

Appropriations, 1993	$1,441,842,000
New obligational authority, 1994:	
Estimate	1,110,436,000
Recommended	1,726,164,000
Increase	615,728,000

This appropriation finances the acquisition of tactical and utility airplanes and helicopters, including associated electronics, electronic warfare and communications equipment and armament; modification of in-service aircraft; ground support equipment, components and parts such as spare engines, transmissions, gear boxes and sensor equipment. It also funds related training devices, such as combat mission flight simulators, and production base support.

Program Recommended

The total amount recommended in the bill will provide the following program in fiscal year 1994:

[In thousands of dollars]

	Budget request Qty	Budget request Amount	Committee recommended Qty	Committee recommended Amount	Change from request Qty	Change from request Amount
AIRCRAFT PROCUREMENT, ARMY						
AIRCRAFT						
FIXED WING						
GUARDRAIL COMMON SENSOR (TIARA)	--	4,885	2	29,885	+2	+25,000
C-21A AIRCRAFT	--	---	4	22,000	+4	+22,000
ARL (TIARA)	--	---	--	42,098	--	+42,098
ROTARY						
TOTAL PACKAGE FIELDING	--	270	--	270	--	---
AH-64 ATTACK HELICOPTER (APACHE)	--	17,570	24	388,000	+24	+370,430
UH-60 BLACKHAWK (MYP)	60	233,557	60	233,557	--	---
UH-60 BLACKHAWK (MYP) (AP-CY)	--	174,696	--	174,696	--	---
HELICOPTER NEW TRAINING	60	29,254	56	48,154	--	+18,900
TOTAL, AIRCRAFT		460,240		936,006		+475,430
MODIFICATION OF AIRCRAFT						
TRACTOR DEN	--	10	--	10	--	---
GUARDRAIL MODS (TIARA)	--	111,834	--	111,834	--	---
AH1F MODS	--	4,286	--	4,286	--	---
AH-64 MODS	--	46,392	--	45,292	--	-1,100
CH-47 CARGO HELICOPTER MODS (MYP)	--	15,387	--	15,387	--	---
OH-58 MODS	--	7,886	--	7,886	--	---
C-20 AIRCRAFT MODS	--	600	--	600	--	---
FLIGHT DATA RECORDER	--	2,373	--	---	--	-2,373
UH-1 MODS	--	14,171	--	14,171	--	---
UH-1 HUEY SLEP	--	---	--	25,000	--	+25,000
UH-60A (BLACK HAWK) MODS	--	46,000	--	16,000	--	-30,000
KIOWA WARRIOR	--	146,840	--	130,010	--	-16,830
AHIP	--	---	38	216,000	+38	+216,000
EH-60 QUICKFIX MODS	--	400	--	400	--	---
AIRBORNE AVIONICS	--	4,700	--	4,700	--	---
ASE MODS	--	4,100	--	4,100	--	---
MODIFICATIONS < $2.0M	--	1,830	--	1,830	--	---
TOTAL, MODIFICATION OF AIRCRAFT		400,100		595,500		+190,197
SPARES AND REPAIR PARTS	--	86,251	--	56,251	--	-30,000
SUPPORT EQUIPMENT AND FACILITIES						
GROUND SUPPORT AVIONICS						
AIRCRAFT SURVIVABILITY EQUIPMENT	--	37,000	--	37,000	--	---
OTHER SUPPORT						
AIRBORNE COMMAND & CONTROL CONSOLES	--	11,372	--	11,372	--	---
AVIONICS SUPPORT EQUIPMENT	--	33,100	--	33,100	--	---
COMMON GROUND EQUIPMENT	--	27,306	--	27,306	--	---
CONTRACT AUDIT/MGMT	--	20,897	--	---	--	-20,897
AVIATION LIFE SUPPORT EQUIPMENT (ALS	--	11,000	--	11,000	--	---
AIR TRAFFIC CONTROL	--	8,381	--	8,381	--	---
INDUSTRIAL FACILITIES	--	7,322	--	7,322	--	---
TOTAL, SUPPORT EQUIPMENT AND FACILITIES		157,777		136,880		-20,897
TOTAL, AIRCRAFT PROCUREMENT, ARMY		1,110,400		1,726,164		+615,730

Committee Recommendations

Authorization Changes

The Committee recommends the following changes in the budget estimate, in accordance with House and/or Senate authorization action:

[In thousands of dollars]

	Budget request	Committee recommended	Change from request
Aircraft procurement, Army:			
Guardrail common sensor (TIARA)	4,885	29,885	+25,000
ARL (TIARA)		42,098	+42,098
Helicopter new training	29,254	48,154	+18,900
Spares and repair parts	86,251	56,251	−30,000
Contract audit/mgmt	20,897		−20,897

Aircraft

Army Utility Helicopters

The Army budgeted $233,557,000 and $174,696,000 in advance procurement of the UH-60 Black Hawk helicopter under a

multiyear contract. The Committee recommends both requests at the budgeted level. However, the Committee points out that the Army is embarked on a utility helicopter modernization program that is probably neither appropriate nor affordable. The Committee finds it curious that at a time of significant force structure reductions, the acquisition objective for the UH-60 has more than doubled to 2248. The most recent Selected Acquisition Report posted a $7.6 billion program cost increase for the UH-60 (from $8.7 billion to $16.3 billion), to accommodate the inventory objective increase. This was the largest increase of any Defense program. At the same time, the Army's interest in a light utility capability, similar to that provided by the thousands of UH-1H Hueys now flying, has dwindled to a mere 131.

The Committee doubts that the Army can afford either the procurement cost of its UH-60 inventory objective or the cost to operate that fleet. At the same time there will be a continuing need for utility helicopter capability for which the UH-60 is an overkill. Such a capability could be provided by an upgraded UH-1H Huey or a commercial light utility helicopter at a fraction of the acquisition and operating cost of the UH-60. Yet the Army has resisted starting such a program because it claims it cannot be afforded. The Committee recommends initiating such a program, as discussed immediately below.

UH-1 HUEY SLEP

The Committee recommends an appropriation of $25,000,000 for aircraft manufacturer-certified upgrades of Army UH-1 utility helicopters to be utilized by the Army National Guard in conjunction with the authorized Gulf States Counter-Drug Initiative and to enhance the Guard's other ongoing military missions. The Committee believes that the upgrade of the UH-1 helicopter fleet, particularly in Texas, Florida, and other Gulf of Mexico states, will significantly enhance the ability of the Guard to carry out its regular Federal and State military missions, including its effort to assist State and local law enforcement in counterdrug operations throughout the Gulf region.

In approving funding for this comprehensive upgrade of UH-1 helicopters in Texas and the other Gulf states, the Committee is cognizant of several proposed programs to upgrade the UH-1, and the claims and counterclaims of each. However, the Committee believes that whatever means is chosen by the Army Guard to upgrade their UH-1 helicopters, the Army and the Guard should proceed immediately with an upgrade program that, at a minimum, increases the operational performance of the UH-1; significantly reduces the operation and maintenance costs attributed to the UH-1; and extends the service life of the helicopter by at least 10-15 years. Specifically, to ensure that the investment in the UH-1 helicopter upgrade program results in more than just minor enhancements to the aircraft, the Committee directs that at least the following criteria be imposed on any entity in carrying out the UH-1 helicopter upgrade/service life extension program:

(1) The upgrade must be aircraft manufacturer-certifiod to ensure safety and proven integration of upgrade components, including avionics and other added value components;

(2) The operational performance of the UH-1 must be significantly enhanced by the upgrade program, including improved mission capability to ensure at least an increase in maximum gress weight of 1,000 pounds over current UH-1 capabilities;

(3) The operational costs attributed to the UH-1 helicopter must be reduced by at least twenty-five percent as a result of the upgrade of the UH-1 helicopter; and

(4) No additional research and development costs should be incurred by the Department of Defense to implement an upgrade program for the UH-1 helicopter.

The Committee believes that these are minimum standards that must be applied by the Army and the Guard in carrying out any upgrade of their UH-1 utility helicopters, and that the funds appropriated for the upgrade program should only be obligated in accordance with these important performance criteria. The Committee is providing these UH-1 upgrade funds with a sense of urgency to provide the Guard with enhanced helicopter assets to bolster Guard readiness, including its ability to carry out counterdrug operations in Texas and other Gulf of Mexico states. The Committee expects the Army to implement this upgrade program expeditiously in fiscal year 1994 and to make periodic reports to the Committee regarding how it is carrying out the UH-1 helicopter upgrades approved in this report. Such reports should also include a strategy for how the upgraded UH-1 helicopters will be utilized as part of the Gulf States Counterdrug Initiative.

C-21A AIRCRAFT

The Committee recommends $22,000,000 for procurement of four C-21A operational support aircraft for the Army. These operational support aircraft are to be utilized by the Army to supplement its current fixed wing capabilities and should be used only by those command elements whose missions require such aircraft optimization due to time sensitivity or length of flight constraints.

AH-64 APACHE

The Army budgeted $17,570,000 for the AH-64 Apache aircraft program. These funds are to pay for fielding costs for Apache aircraft which have been funded in previous years. The Committee recommends $386,000,000 for the procurement of 24 Apache aircraft. These aircraft will replace the 24 aircraft which were given to Israel, without reimbursement, out of the Army inventory. The Committee notes that the current validated requirement for Apache, which recognizes a reduced force structure, is 1024 aircraft. To date, only 811 have been funded. Of these, 31 aircraft have been lost to attrition and 24 are being lost to Israel. In addition, the Army and the contractor now face a 19 month production break between the last production aircraft and the beginning of the Longbow Apache modification program. The cost of this break is estimated to be about $400 million. Therefore, the Committee recommendation is deemed responsible in light of economic, production, and force structure considerations. The Committee believes that fielding costs can be covered by the total amount recommended.

The Committee bill also includes a general provision enabling the procurement funded in this appropriation.

NEW TRAINING HELICOPTER

The Army budgeted $29,254,000 for the procurement of 50 new training helicopters. This is to be the last procurement under a fixed price contract which was signed after the budget was prepared. The actual contract price for the total quantity of 157 aircraft was $18,900,000 greater than what has been budgeted and appropriated for the program to date. The Committee notes that, even with the higher acquisition unit cost, the program life cycle cost savings for NTH still exceed the estimates by $195,000,000. The Committee recommends $48,154,000 for this program, an increase of $18,900,000.

MODIFICATION OF AIRCRAFT

AH–64 APACHE

The Army budgeted $48,392,000 for AH–64 Apache modifications. The Committee recommends $45,292,000, a reduction of $1,100,000 which results from contract savings.

FLIGHT DATA RECORDER

The Army budgeted $2,373,000 for procurement of flight data recorders. The Committee recommends denial of the entire amount based on the fact that the contract has been cancelled.

BLACK HAWK

The Army budgeted $48,886,000 for UH–60A Black Hawk modifications. Included in this amount is $15,000,000 to initiate a $243 million UH–60Q modification program. Type classification of this modification program will not occur until October, 1994 and the modification kit production contract award will not be made until May, 1995. The Committee believes that the budgeted funds for nonrecurring costs are premature and recommends denial of the request.

The UH–60 modification budget also includes $23,300,000 for a refurbishment program. This is more than triple the current fiscal year 1993 program level. Furthermore, $5.4 million of last year's $11.9 million appropriation has been reprogrammed. Finally, since the Army provided no budget backup data for this program, the Committee is unaware of milestones, total cost and quantity, contract information, and other essential information. The Committee recommends $6.5 million for this program, the current level and a reduction of $15.8 million.

In total, the Committee recommends $16,086,000 for UH–60 Black Hawk modifications, a reduction of $30,800,000.

KIOWA WARRIOR

The Army budgeted $145,548,000 for the Kiowa Warrior program. Under this program, older AHIP aircraft are modified to give them weapons carrying capability. Budget documentation shows that during fiscal year 1993, the Army intends to initiate a new

modification in this program ("Updated CDS Processor") costing at least $93,000,000. Funding to start the program in fiscal year 1993 apparently is to be derived from contract savings from the AHIP new preduction funds provided by Congress last year. The procedure being followed by the Army violates agreed upon requirements for prior notification for new starts in modification lines. The Committee recommends $129,018,000 for the Kiowa Warrior modification program, a reduction of $16,530,00. This is the amount proposed for the new program in fiscal years 1993 and 1994.

AHIP

The Army budgeted nothing for the Army Helicopter Improvement program (AHIP). Because the inventory objective still exceeds the number of aircraft funded to date, the Committee recommends $216,000,000 for 36 aircraft, the same number funded in fiscal year 1993.

The Committee bill includes a general provision which enables the procurement recommended.

Support Equipment and Facilities

CONTRACT AUDIT/MANAGEMENT

For reasons discussed at the beginning of the Procurement section of this report, the Committee recommends denial of the $20,897,000 budgeted for contract administration/audit.

MISSILE PROCUREMENT, ARMY

Appropriations, 1993	$1,051,667,000
New Obligational authority, 1994:	
Estimate	1,043,550,000
Recommended	1,126,110,000
Increase	82,560,000

This appropriation finances the acquisition of surface-to-air, surface-to-surface, and antitank/assault missile systems. Also included are major components, modifications, targets, test equipment, and production base support.

Program Recommended

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
MISSILE PROCUREMENT, ARMY						
OTHER MISSILES						
SURFACE-TO-AIR MISSILE SYSTEM						
HAWK SYSTEM SUMMARY	--	2,782	--	2,782	--	---
PATRIOT SYSTEM SUMMARY (MYP)	--	40,611	--	40,611	--	---
STINGER SYSTEM SUMMARY	--	8,356	300	33,356	+300	+25,000
AVENGER SYSTEM SUMMARY	144	135,231	144	135,231	--	---
AIR-TO-SURFACE MISSILE SYSTEM						
HELLFIRE SYS SUMMARY	1,785	92,535	1,485	64,835	-300	-27,700
ANTI-TANK/ASSAULT MISSILE SYSTEM						
JAVELIN (AAWS-M) SYSTEM SUMMARY	1,000	207,268	1,000	207,268	--	---
TOW 2 SYSTEM SUMMARY	--	15,282	2,000	82,282	+2,000	+67,000
MLRS SYSTEM ROCKET	--	9,801	12,000	80,101	+12,000	+70,300
MLRS LAUNCHER	34	218,818	34	198,818	--	-20,000
ARMY TACTICAL MSL SYS (ATACMS) - SYS SUM	256	182,580	256	182,580	--	---
CONTRACT ADMINISTRATION/AUDIT	--	22,040	--	---	--	-22,040
TOTAL, OTHER MISSILES		913,081		995,661		+82,580
MODIFICATION OF MISSILES						
MODIFICATIONS						
PATRIOT MODS	--	18,528	--	18,528	--	---
AVENGER MODS	--	9,316	--	9,316	--	---
TOW MODS	--	7,250	--	7,250	--	---
MLRS MODS	--	23,197	--	23,197	--	---
MODIFICATIONS LESS THAN $2.0M	--	1,901	--	1,901	--	---
TOTAL, MODIFICATION OF MISSILES		60,192		60,192		---
SPARES AND REPAIR PARTS	--	50,810	--	50,810	--	---
SUPPORT EQUIPMENT AND FACILITIES						
AIR DEFENSE TARGETS	--	14,967	--	14,967	--	---
ITEMS LESS THAN $2.0M (MISSILES)	--	962	--	962	--	---
PRODUCTION BASE SUPPORT	--	3,758	--	3,758	--	---
TOTAL, SUPPORT EQUIPMENT AND FACILITIES		19,687		19,687		---
TOTAL, MISSILE PROCUREMENT, ARMY		1,043,580		1,126,160		+82,580

COMMITTEE RECOMMENDATIONS

OTHER MISSILES

STINGER

The Committee recommends $33,356,000 for the Stinger missile program, an addition of $25,000,000 to the budget request. The Committee has included this additional funding to procure 300 Stinger missiles. This will allow the Army to avoid a costly break in the production line prior to the initiation of the Block I retrofit program.

HELLFIRE

The Committee recommends $64,835,000 for the Hellfire missile program, a reduction of $27,700,000 to the fiscal year 1994 budget request. The Army has requested $4,179,000 to begin the destruction and disposal process of production tooling for the Hellfire I missile. Given continued prospects for international sales of this system the Committee believes that this proposal is premature and hereby denies the request. The Committee also recommends deleting funding for the establishment of an organic depot capability for the improved Hellfire II missile. The Committee understands that the Army has yet to decide the final site of the depot or the initial support equipment requirements. The Committee therefore denies the request of $9,673,000 for this purpose.

Finally, the Committee notes that under the recently awarded contract for the Hellfire II missile the Army plans to ultimately produce the missile at a monthly rate of 445, 85 percent of the

maximum rate, only to reduce that rate to 310 missiles a month in the outyears. The Committee fails to understand the rationale for producing any weapon system at rates approaching maximum capacity in the present threat and budgetary environment. Accordingly the Committee recommends roducing the fiscal year 1994 request by 300 missiles and directs the Army to extend the prior year Hellfire II production schedule to reflect a more realistic and stable monthly production rate.

TOW II

The Committee recommends $82,282,000 for the Tow II missile system an increase of $57,000,000 to the budget request. The additional funding provided by the Committee will enable the Army to procure 2000 Tow IIB missiles and retain a warm production line. The Committee does not agree with the Army's proposal to terminate production of this system with the conclusion of the fiscal year 1993 acquisition. The Committee notes that the Army's own figures show that present inventories of TOW missiles are well below stated requirements. Accordingly the Committee recommends this increase and further directs that no appropriated funds may be obligated to initiate destruction and disposal of production tooling for the TOW missile.

MULTIPLE LAUNCH ROCKET SYSTEM

The Army budgeted $9,801,000 for procurement of MLRS rockets and $216,616,000 for procurement of 34 MLRS launchers. The Committee believes that the budget proposal inadequately supports the MLRS rocket production base until such time as new configurations of this rocket enter production. Therefore, the Committee recommends $80,101,000 for procurement of 12,000 rockets and $196,616,000 for procurement of 34 launchers.

CONTRACT ADMINISTRATION/AUDIT

For reasons explained at the beginning of the Procurement section of the report, the Committee recommends denial of the $22,040,000 budgeted for contract administration/audit.

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY

Appropriations, 1993	$921,389,000
New obligational authority, 1994:	
Estimate	874,346,000
Recommended	892,709,000
Increase	18,363,000

This appropriation finances the acquisition of tanks; personnel and cargo carriers; fighting vehicles; tracked recovery vehicles; self-propelled and towed howitzers; machine guns; mortars; modifications of in-service equipment; initial spares; and production base support.

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
PROCUREMENT OF W&TCV, ARMY						
TRACKED COMBAT VEHICLES						
ABRAMS TRNG DEV MOD	--	904	--	904	--	---
BRADLEY FIGHTING VEHICLE FAMILY (MYP)	--	86,100	--	86,100	--	---
BRADLEY BASE SUSTAINMENT PROGRAM	--	192,437	--	192,437	--	---
BRADLEY FVS TRAINING DEVICES (MOD)	--	1,920	--	1,920	--	---
ABRAMS TANK TRAINING DEVICES	--	24,586	--	24,586	--	---
ARMORED GUN SYSTEM (AGS)	--	8,218	--	---	--	-8,218
ARMORED GUN SYSTEM (AGS) (AP-CY)	--	7,700	--	---	--	-7,700
M1 ABRAMS TANK SERIES (MYP)	--	26,007	--	26,067	--	---
MODIFICATION OF TRACKED COMBAT VEHICLES						
CARRIER, MOD	--	5,466	--	17,466	--	+12,000
BFVS SERIES (MOD)	--	29,904	--	29,904	--	---
HOWITZER, MED SP FT 155MM M109A6 (MO	--	171,526	--	159,526	--	-12,000
HOWITZER, MED SP FT 155MM M109A5 (MO	--	15,466	--	15,466	--	---
FAASV PIP TO FLEET	--	16,006	--	16,006	--	---
ARMORED VEH LAUNCH BRIDGE (AVLB) (MOD)	--	6,862	--	6,862	--	---
M1 ABRAMS TANK (MOD)	--	53,090	--	53,090	--	---
ABRAMS UPGRADE PROGRAM	72	70,701	72	110,701	--	+40,000
M88A1E1 RECOVERY VEHICLE	--	---	13	31,200	+13	+31,200
MODIFICATIONS LESS THAN $2.0M (TCV-WTCV)	--	530	--	530	--	---
SUPPORT EQUIPMENT AND FACILITIES						
SPARES AND REPAIR PARTS	--	34,137	--	17,337	--	-16,800
ITEMS LESS THAN $2.0M (TCV-WTCV)	--	207	--	207	--	---
PRODUCTION BASE SUPPORT (TCV-WTCV)	--	23,544	--	23,544	--	---
REGIONAL MAINTENANCE TRAINING SITES-EQUIP	--	2,001	--	2,001	--	---
CONTRACT ADMINISTRATION/AUDIT	--	16,740	--	---	--	-16,740
TOTAL, TRACKED COMBAT VEHICLES		783,226		806,079		+22,853
WEAPONS AND OTHER COMBAT VEHICLES						
HOWITZER, LIGHT, TOWED, 105MM, M119	--	4,200	--	---	--	-4,200
MACHINE GUN, 5.56MM (SAW)	8,864	12,832	5,864	12,832	--	---
GRENADE LAUNCHER, AUTO, 40MM, MK19-3	606	20,677	606	20,677	--	---
MORTAR, 120MM	226	16,940	226	16,940	--	---
5.56 CARBINE M4	22,200	11,200	22,000	11,200	--	---
PERSONAL DEFENSE WEAPON, 9MM	--	1,026	--	1,026	--	---
MODIFICATION OF WEAPONS AND OTHER COMBAT VEHI						
SQUAD AUTOMATIC WEAPON (MOD)	--	4,942	--	4,942	--	---
M16 RIFLE MODS	--	2,024	--	2,024	--	---
MODIFICATIONS LESS THAN $2.0M (WOCV-WTCV)	--	2,061	--	2,061	--	---
SUPPORT EQUIPMENT AND FACILITIES						
SPARES AND REPAIR PARTS	--	987	--	987	--	---
ITEMS LESS THAN $2.0M (WOCV-WTCV)	--	1,026	--	1,200	--	---
PRODUCTION BASE SUPPORT (WOCV-WTCV)	--	5,010	--	5,010	--	---
INDUSTRIAL PREPAREDNESS	--	5,026	--	5,090	--	---
TOTAL, WEAPONS AND OTHER COMBAT VEHICLES		91,121		86,921		-4,200
TOTAL, PROCUREMENT OF W&TCV, ARMY		874,346		892,700		+18,353

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Committee Recommendations

Tracked Combat Vehicles

ARMORED GUN SYSTEM

The Army budgeted $8,218,000 for special tooling and $7,780,000 for advance procurement for the armored gun system. Though the Committee fully supports this program, the Committee recommends denial of both procurement requests this year. The Committee notes that prototype AGS vehicles will not be delivered for testing until the second quarter of fiscal year 1994. Testing continues well into fiscal year 1995. In addition, $161,500,000 of the $270,900,000 research and development program is budgeted in fiscal year 1994 and beyond. The Committee believes that it is premature to appropriate advance procurement funding this year, particularly when no budget documentation was provided to support this item. For a program of this nature, it is doubtful that advance procurement funding can ever be justified. For special tooling requirements, $4,747,00 was appropriated last year and additional funding at this time is premature.

Modification of Tracked Combat Vehicles

CARRIER MODS

The Army budgeted $5,465,00 for carrier mods. The Committee recommends $17,465,000, an increase of $12,000,000. The additional funds recommended will support the upgrade of 80 M113's to the A3 configuration for the 24th Infantry Division. These vehicles will be used as 120mm mortar carriers, the M1064.

M109A6 PALADIN HOWITZER

The Army budgeted $171,526,000 for the M109A6 Paladin 155mm howitzer modification program. The Committee recommends $159,526,000, a reduction of $12,000,000, as a result of contract savings.

ABRAMS TANK UPGRADE PROGRAM

The Army budgeted $79,701,000 for the Abrams tank upgrade program. The Committee fully supports this request. Together with $583.5 million appropriated or made available in prior years and $88.6 million anticipated to be budgeted in fiscal year 1995, this $751.8 million program will complete the Phase I upgrade of 206 M1 tanks and four prototypes to the M1A2 configuration. The Committee recognizes that the funding stream and budget execution for this program have not followed normal procedures for procurement/modification programs. This situation is largely the result of the strong disagreement between the Congress and the Defense Department on this program in the past. Now that this disagreement is behind us, the Committee expects normal budgeting for this program in Phase II. Specifically, the Committee expects that any advance procurement funding should be fully justified and supported, be budgeted for no more than one year in advance, and shown on a separate line in the P–1. Budget back-up documentation shall include the standard forms and standard level of detail.

The major purpose of the tank upgrade program was to preserve key elements of the industrial base (consisting of both manufacturing facilities and a skilled workforce) at a time when world events and emerging Army force structure did not justify the production of new tanks. An element of the tank industrial base which the upgrade program does not preserve is new engine production. The current program includes depot overhaul of existing engines for the upgraded tanks. The program has been structured this way because of the high cost of new engines ($500,000 each) and the large supply of engines currently in the inventory. The Army currently has 851 engines in depot stock and 597 in worldwide direct support stockage and war reserve. Of the 851 engines in depot stock, 253 are new and have never been used. Only five engines have been "washed out" of the inventory since the beginning of the M-1 tank program.

The Committee has been requested to fund the procurement of new engines—at a cost of $105,000,000—to be used in lieu of overhauled engines in Phase I of the tank upgrade program. The argument for this proposal is that the industrial base to manufacture tank engines will wither away without new engine production. This base includes sophisticated and specialized manufacturing capability which cannot be converted to other purposes nor easily recreated once it has gone away. An additional argument for new production is that there is currently some uncertainty about the performance and durability of depot-overhauled tank engines in the heavier M1A2 tank. The Army is conducting tests to resolve these uncertainties.

The Committee agrees with the Senate Armed Services Committee that a blue ribbon panel should be established under the auspices of the Defense Science Board to carefully examine the tank engine industrial base to ascertain what elements need to be retained in order to preserve a viable national tank production capability. Such an examination should include a cost effectiveness analysis. Using the recommendations of this panel, and taking into consideration the results of tests on overhauled engine performance and durability, the Office of the Secretary of Defense is directed to report to the Committee by January 31, 1994 on what actions it recommends. The Committee recommends an increase over the budget of $40,000,000. These funds may be used to implement the Department's recommendations. Up to $17 million may be obligated for new engine long lead components if the Department certifies that a production gap will occur that will seriously impair the production base options. The remainder may not be obligated until the Department has submitted its plan and the Committee has approved it.

The Committee is interested in the most cost-effective solution to this problem. Furthermore, the Committee does not want any prejudicial actions taken before the plan is approved. The additional funding provided may be more than sufficient for the Phase I upgrade program. In no event shall the total cost of engines for the Phase I program exceed $105 million (including funds already obligated) which the contractor says is required to procure 210 new engines. The Army is expected to budget any additional resources to complete the plan in fiscal year 1995.

M88A1E1 TANK RECOVERY VEHICLE

The Army budgeted no procurement funding for the M88A1E1 tank recovery vehicle. Currently, two recovery vehicles or another tank are required to recover an M1A1 or M1A2 tank. This deficiency is to be corrected with the M88A1E1 modification, which gives the older vehicle recovery capability for the heavier tanks.

Testing of the M88A1E1 has proceeded to the point where a low rate initial production decision can be made in fiscal year 1994. Unfortunately, procurement funding was eliminated from the fiscal year 1994 budget for affordability reasons. The budget proposes that production start by building additional prototypes in fiscal year 1994 using research and development funds. The Committee believes that this program's importance dictates that the regular order be followed and that low rate production funds be provided this year. Accordingly, the Committee recommends $31,200,000 for 13 M88A1E1 vehicles.

SUPPORT EQUIPMENT AND FACILITIES

SPARES AND REPAIR PARTS

The Army budgeted $34,137,000 for procurement of spares and repair parts. The Committee recommends $17,337,000, a reduction of $16,800,000 in conformance with authorization legislation.

CONTRACT ADMINISTRATION/AUDIT

For reasons explained at the beginning of the Procurement section of the report, the Committee recommends denial of the $15,749,000 budgeted for contract administration/audit.

WEAPONS AND OTHER COMBAT VEHICLES

M119 105MM LIGHT TOWED HOWITZER

The Army budgeted $4,290,000 for the M119 105mm light towed howitzer program. The fiscal year 1994 budget terminates this program and the amount budgeted is for payment of royalties. However, the Army testified that no costs will be incurred from premature termination of the program. Accordingly, the Committee recommends denial of the entire requests.

PROCUREMENT OF AMMUNITION, ARMY

Appropriations, 1993	$1,094,260,000
New obligational authority, 1994:	
Estimate	734,427,000
Recommended	620,787,000
Decrease	113,640,000

This appropriation finances the acquisition of ammunition, modification of in-service stock, and related production base support including the maintenance, expansion, and modernization of industrial facilities and equipment.

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
PROCUREMENT OF AMMUNITION, ARMY						
AMMUNITION						
SPECIAL AMMUNITION						
SMALL/MEDIUM CAL AMMUNITION						
CTG, 5.56MM, ALL TYPES	--	21,770	--	34,086	--	+12,316
CTG, 7.62MM, ALL TYPES	--	20,523	--	20,523	--	---
CTG, 9MM, ALL TYPES	--	2,531	--	2,531	--	---
CTG, .45 CAL, ALL TYPES	--	401	--	---	--	-401
CTG, .50 CAL, ALL TYPES	--	32,423	--	31,616	--	-807
CTG, 25MM, ALL TYPES	--	30,536	--	30,536	--	---
CTG, 30MM, ALL TYPES	--	930	--	930	--	---
MORTAR AMMUNITION						
CTG MORTAR 60MM 1/10 PRAC M840	1	302	11	3,200	+10	+2,898
CTG MORTAR 120MM SMOKE XM929 W/MO FU	--	4,704	--	4,704	--	---
TANK AMMUNITION						
CTG TANK 25MM SUBCAL PRAC M880	12	730	12	730	--	---
CTG TANK 105MM TP-T M490A1	--	---	80	20,000	+80	+20,000
CTG TANK 105MM TPDS-T M724A1	--	---	80	20,000	+80	+20,000
CTG TANK 120MM APFSDS-T, ALL TYPES M829A1/A2	24	86,130	34	86,130	--	---
CTG TANK 120MM HEAT/MP, ALL TYPES M830 A1	18	49,346	12	33,346	-6	-16,000
CTG TANK 120MM TP-T M831	58	29,112	58	29,112	--	---
CTG TANK 120MM TPCSDS-T M865	116	54,821	116	54,821	--	---
ARTILLERY AMMUNITION						
PROJ ARTY 155MM SADARM XM898	1,213	77,001	--	---	-1,213	-77,001
PROJ ARTY 155MM M898	--	---	80	10,000	+80	+10,000
ARTILLERY FUZES						
BOMBS						
BOMB, TRAINING, ALL TYPES	--	2,466	--	2,466	--	---
ROCKETS						
ROCKET, HYDRA 70, ALL TYPES	--	54,000	--	54,000	--	---
OTHER AMMUNITION						
DEMOLITION MUNITIONS, ALL TYPES	--	4,837	--	4,837	--	---
GRENADES, ALL TYPES	--	12,177	--	12,177	--	---
SIGNALS, ALL TYPES	--	2,100	--	2,100	--	---
SIMULATORS, ALL TYPES	--	7,200	--	7,200	--	---
MISCELLANEOUS						
AMMO COMPONENTS, ALL TYPES	--	8,140	--	8,140	--	---
CAD/PAD ALL TYPES	--	9,283	--	9,283	--	---
ITEMS LESS THAN $2 MILLION	--	1,110	--	793	--	-317
EOD EXPLOSIVE ITEMS	--	1,312	--	1,312	--	---
AMMUNITION PECULIAR EQUIPMENT	--	4,830	--	4,830	--	---
AT-4 UPGRADE	--	---	--	15,830	--	+15,830
FIRST DESTINATION TRANSPORTATION (AMMO)	--	6,402	--	6,402	--	---
TOTAL, AMMUNITION		527,216		511,440		-15,776
AMMUNITION PRODUCTION BASE SUPPORT						
PRODUCTION BASE SUPPORT						
PROVISION OF INDUSTRIAL FACILITIES	--	40,221	--	40,221	--	---
COMPONENTS FOR PROVE-OUT	--	866	--	866	--	---
LAYAWAY OF INDUSTRIAL FACILITIES	--	51,532	--	41,532	--	-10,000
PROVING GROUND MODERNIZATION	--	1,200	--	1,200	--	---
MAINTENANCE OF INACTIVE FACILITIES	--	60,001	--	54,001	--	-6,000
CONVENTIONAL AMMO DEMILITARIZATION	--	53,330	--	70,460	--	+17,130
TOTAL, AMMUNITION PRODUCTION BASE SUPPORT		207,330		203,330		+2,130
GENERAL REDUCTION - CAWCF	--	---	--	-100,000	--	-100,000
TOTAL, PROCUREMENT OF AMMUNITION, ARMY		734,437		620,797		-113,640
(BY TRANSFER - CAWCF)	--	---	--	(100,000)	--	(+100,000)
TOTAL FUNDS AVAILABLE		(734,437)		(720,797)		(-13,640)

COMMITTEE RECOMMENDATIONS

CONVENTIONAL AMMUNITION WORKING CAPITAL FUND

On October 1, 1981, the Conventional Ammunition Working Capital Fund (CAWCF) was established to improve and simplify the ammunition procurement process, reduce paperwork, and reduce ammunition costs. CAWCF is a revolving fund administered by the Army as the Single Manager for Conventional Ammunition. As currently administered, a standard price is established for all items procured through the fund. This price must be used by all services in preparing their ammunition budgets and is the price charged to the services when ammunition items are actually ordered from the CAWCF. To the extent that actual prices at the time of procurement are above or below the standard prices, the CAWCF cash balance either increases or decreases. A "positive surcharge" or a "negative surcharge" is then applied to the standard pricos set for subsequent years in order to "balance" the Fund. The Committee has supported the CAWCF over the years, but recent events and investigations lead the Committee to conclude that it should be abolished or significantly changed. For example:

1. *Audit reports*. In November, 1992, the DOD Inspector General issued a report on an investigation of the standard pricing procedures followed by the Single Manager. The report found that:

> The single manager did not consistently develop standard prices that accurately estimated actual costs . . .
>
> The CAWCF consistently mispriced customer orders by ignoring the effects of inflation on orders produced in years after the funding year.
>
> Ammunition item prices were neither accurate nor standard because the SMCA established internal policies that conflicted with the [CAWCF] Charter.
>
> CAWCF pricing practices did not gonerally consider relevant information such as contractor production capability, product improvement proposals, learning curves, trend analyses, engineering estimates and quantity differentials.

The $105 million in fiscal year 1994 savings estimated to be achieved by implementing the recommendations of the report have not been reflected in the budget.

2. *No pricing adjustments*. While the CAWCF formerly allowed pricing adjustments where there was a major difference between standard and actual prices, recent changes to the Charter make these adjustments impossible. The standard price, set at least 18 months prior to budget execution, is what has to be paid by the customer, regardless of the actual price. The following examples reveal the impact:

> The actual unit cost of a recent procurement of the M864 artillery projectile was $669 while the CAWCF price was $764. The Army was charged $36 million more than necessary.
>
> The Air Force was charged $37 million more than the actual cost for a fiscal year 1990 procurement of the Combined Effects Munition.
>
> Other examples abound.

3. *"No-year" funding*. Once an order is placed with the CAWCF, the funds are considered obligated, regardless of when the CAWCF actually buys the hardware. Once obligated into the CAWCF funds loose their fiscal year identity. This effectively makes ammunition procurement appropriations "no year" accounts, without fiscal year limitation.

4. *Inclusion of new items*. The CAWCF was not intended to be used for new items that were in development or low rate initial production. But recent experience with SADARM, 120mm tank ammunition, and other items, indicates that this practice is not being followed.

5. *High cash balances*. The CAWCF has had a "negative surcharge" in seven of the last ten years, indicating a consistent tendency to overestimate standard prices. The result is:

A cash balance in the fund significantly in excess of the $350 million approved by the Department. (The latest balance is $433 million; it has been as high as $604 million in the last year.)

Ammunition budgets that mask real costs. (Because of the negative surcharge, the expected actual cost of 1994 ammunition procurement is $187 million more than budgeted. For example, the expected fiscal year 1994 unit cost of the M829A2 tank round is $4240, but the budgeted CAWCF price is only $3586.)

The Committee acknowledges that abolishing the CACWF immediately would be precipitous. However, the Committee is recommending three actions. First, the Committee recommends appropriation language which transfers $100 million from the CAWCF cash balance to the Procurement of Ammunition, Army appropriation. This action will be offset by a general roduction in that account. Second, the Committee directs the Army to report, by March 15, 1994, on actions required for an orderly close-out of the CAWCF. The Army may also propose remedial actions as arguments to the Committee for retaining the fund. Finally, the Committee is requesting the Surveys and Investigations Staff to make an independent evaluation of the CAWCF.

AMMUNITION

REPROGRAMMING

In several instances this year, the Army has reprogrammed below threshold (without prior Congressional knowledge or approval) ammunition procurement funds that were added by Congress in prior year appropriations. The Committee disapproves of this practice. All increases in ammunition procurement funding are to be considered as items of special Congressional interest and identified as such on DoD Form 1414. No reprogramming of these items may be made without prior Congressional approval.

5.56MM AMMUNITION

The Army budgeted $21,776,000 for procurement of 5.56mm ammunition. The Committee recommends $34,095,000, an increase of $12,319,000, to support annual training.

7.62MM AMMUNITION

The Army budgeted $20,523,000 for procurement of 7.62mm ammunition. The Committee recommends the entire amount. The Committee directs that reductions totalling $9,332,000 for M82 blank, 4/1 overhead fire, and M118 special ball be used instead to procure 4/1 minigun and M852 match.

.45 CALIBER AMMUNITION

The Army budgeted $401,000 for procurement of 5.45 caliber ammunition. The Committee recommends denial of the entire amount since the bill prohibits procurement of handgun ammunition that is not the 9mm standard.

.50 CALIBER AMMUNITION

The Army budgeted $32,423,000 for procurement of .50 caliber ammunition. The Committee recommends $31,616,000, a reduction of $807,000 because the inventory will exceed requirements for the 4 ball/1 tracer linked cartridge.

25MM AMMUNITION

The Army budgeted $30,535,000 for procurement of 25mm ammunition. The Committee recommends the entire amount. However, the Committee directs that a reduction of $25,000,000 for procurement of the M910 be used instead to procure the M919.

M840 60MM MORTAR PRACTICE AMMUNITION

The Army budgeted $302,000 for procurement of the M840 60mm mortar 1/10 range practice ammunition. The Committee recommends $3,200,000, an increase of $2,898,000, to fund this item at last year's level and enhance training.

120MM MORTAR AMMUNITION

As proposed in the budget, the Committee recommends deletion of a general provision contained in last year's bill concerning the procurement of 120mm mortars and ammunition. The Committee is recommending this action with the understanding that the Army will continue to follow the requirements of that provision.

105MM TANK TRAINING AMMUNITION

The Committee recommends $20,000,000 for the procurement of M490A1 ammunition and $20,000,000 for procurement of M724A1 ammunition. These are both 105mm tank training rounds. The Committee recommendation will sustain the industrial base and enhance training.

M830A1 120MM TANK AMMUNITION

The Army budgeted $50,046,000 for procurement of M830A1 120mm tank ammunition. The Committee recommends $33,246,000, a reduction of $16,800,000, because of late award of prior year contracts and budgeted deliveries falling outside of the funded delivery period.

155MM SADARM

The Army budgeted $77,661,000 for the initial procurement of 1,213 155mm SADARM artillery rounds. This round consists of submunitions fired in an artillery shell. The submunitions are ejected from the shell, descend by parachute while looking for a target, find a target, and then kill it. The last test prior to a production decision required that at least 24 out of 72 submunitions shot hit a target. After shooting 42 submunitions and hitting only 9 targets, it was clear that this requirement could not be achieved. The Army has requested, and the Committee has agreed, that procurement funds be deleted since a production decision cannot be made until fiscal year 1995 at the earliest. This is the second year that deleting budgeted procurement funds has been recommended following unsatisfactory tests and technical problems.

The reduction in procurement has been offset by an increase in research and development for additional testing.

M804 155MM ARTILLERY TRAINING AMMUNITION

The Army budgeted no funds for the procurement of M804 155mm artillery training ammunition. The Committee recommends $10,000,000 for procurement of 50,000 rounds to preserve the industrial base and enhance training.

The Army has been examining the introduction of flexible manufacturing technologies into ammunition production. In contrast to the current posture featuring dedicated single-commodity, high volume production lines, flexible ammunition manufacturing aims to create a more versatile and responsive capability with lines capable of producing a variety of ammunition types (for example, artillery and mortar shell metal parts) in smaller quantities, without the expensive and time-consuming retooling and facilitization required in the past. This would provide a cost-effective means to preserve essential manufacturing technologies while also meeting smaller, more infrequent ammunition production requirements.

In order to further development of this concept, the Committee has recommended $10,000,000 for production of 50,000 M–804 155mm artillery training rounds at the flexible manufacturing facility at the Scranton Army Ammunition Plant. These funds are to be used to demonstrate low volume production of approximately 3,000 rounds per month, a rate only one-eighth that previously associated with M–804 production at this facility. In order to ensure timely implementation of this demonstration the Army is directed to obligate these funds not later than May 1, 1994.

The Committee strongly supports further implementation of the flexible manufacturing concept and would support additional initiatives by the Army in this area.

VOLCANO MINE

The Committee directs that $30,000,000 of the funds appropriated in fiscal year 1993 for procurement of the Volcano mine system be used to procure the M87A1 version of this munition and that no further procurements of the M87 be put on contract. The Committee believes that the deficiencies in the older version—corrected in the latest configuration—make additional procurement of

the M87 unjustified. The Committee expects the Army to use a system contract approach for this and all future procurements of the M87A1.

ITEMS LESS THAN $2 MILLION

The Army budgeted $1,100,000 for procurement of items costing less than $2 million. The Committee recommends $793,000, a reduction of $317,000 because the inventory will exceed the needs for the .22 caliber ball cartridge.

AT–4 UPGRADE

The Committee recommends $15,000,000 to initiate an AT–4 upgrade program. The AT–4 is a shoulder fired anti-armor weapon now in the inventory as an item of issue in the Army and Marine Corps. Combat experience in Operations Just Cause and Desert Storm provided strong justification for four low cost improvements: adding an integral night sight rail; providing sand/dirt protection; changing from a wooden to a metal container; and, adding a resafing label. The Committee directs that the recommended funding be used to initiate these four improvements and directs the Department to budget sufficient funds in fiscal years 1995, 1996, and 1997 to accomplish retrofit of all weapons in the inventory.

AMMUNITION PRODUCTION BASE SUPPORT

ARMS INITIATIVE

In the fiscal year 1993 appropriation act, Congress provided $200,000,000 for carrying out a program called the Armament Retooling and Manufacturing Support (ARMS) Initiative. The purpose of this program is to facilitate use of government-owned ammunition plants for purposes other than ammunition manufacturing. The conference agreement stipulated that only $60,000,000 be made available initially to begin the program under existing legal authorities. The remainder of the funding was to be available only after the Army completed several tasks. Two of these tasks were a comprehensive market survey to determine interest in the ARMS Initiative and a public-private task force to make recommendations on the permanent structure and implementation of the Initiative.

The Committee is generally pleased with the Army's progress to date in entering into "facility contracts" with ammunition plant operators and working with those operators and local communities to carry out the ARMS Initiative. However, progress on the market survey and the public-private task force seems to be slow. The Committee is particularly concerned that additional legislative and administrative actions be identified to carry out the purposes of the ARMS Initiative. The Committee expects the Army to expedite these two activities and report quarterly on them and other aspects of the ARMS Initiative.

The Army is reminded that the Committee takes a very conservative view of existing legislative authorization for carrying out the ARMS Initiative, particularly with respect to loan guarantees. The Army should be prepared to cite specific Army legal authority to support any ARMS activities prior to enactment of additional or new legislation.

LAYAWAY OF INDUSTRIAL FACILITIES

The Army budgeted $51,532,000 for layaway of industrial facilities. The Committee recommends $41,532,000, a reduction of $10,000,000. The Committee believes that vigorous implementation of the ARMS Initiative reduces the requirement for layaway funds.

MAINTENANCE OF INACTIVE FACILITIES

The Army budgeted $59,801,000 for maintenance of inactive facilities. The Committee recommends $54,801,000, a reduction of $5,000,000. The Committee believes that the new practice of maintaining facilities in a "caretaker" status instead of a "layaway" status reduces the requirement for maintenance funds.

CONVENTIONAL AMMUNITION DEMILITARIZATION

The Army budgeted $53,339,000 for conventional ammunition demilitarization. The Committee recommends $70,468,000, an increase of $17,129,000. In recent years, conventional ammunition demilitarization costs for all services were consolidated in this account. The 1994 budget proposed to change this by funding $17,129,000 in demilitarization costs in the budgets of the other services. Testimony before the Committee stated that the services agreed unanimously that the current funding mechanism was working satisfactorily and that there were no perceived advantages to changing this procedure. There is also no guarantee that the services would not reprogram demilitarization funds for other purposes. The Committee agrees that the current practice is satisfactory and funds all demilitarization costs in this appropriation.

The Committee directs that no less than $3,000,000 of the funds included in the bill be used to continue the Iowa Army Ammunition Plant demilitarization upgrade plan. In addition, fiscal year 1995 funds should be programmed for installation of the plasma furnace at this facility should the feasibility of this process be shown.

GENERAL REDUCTION—CAWCF

As discussed at the beginning of this section of this report, the Committee recommends a general reduction of $100,000,000 in this appropriation. This general reduction is offset by a transfer of surplus cash from the Conventional Ammunition Working Capital Fund.

OTHER PROCUREMENT, ARMY

Appropriations, 1993	$3,047,053,000
New obligational authority, 1994:	
Estimate	3,051,281,000
Recommended	2,904,933,000
Decrease	146,348,000

The appropriation finances the acquisition of: (a) tactical and commercial vehicles, including trucks, semi-trailers, and trailers of all types to provide mobility and utility support to field forces and the worldwide logistical system; (b) communications and electronics equipment of all types to provide fixed, semi-fixed, and mobile strategic and tactical communications equipment; (c) other support equipment, such as chemical defensive equipment, tactical bridg-

ing, shop sets, construction equipment, floating and rail equipment, generators and power units, material handling equipment, medical support equipment, special equipment for user testing, and nonsystem training devices. In each of these activities funds are also included for modification of in-service equipment, investment spares and repair parts, and production base support.

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
OTHER PROCUREMENT, ARMY						
TACTICAL AND SUPPORT VEHICLES						
TACTICAL VEHICLES						
TACTICAL TRAILERS/DOLLY SETS	--	4,130	--	4,130	--	---
SEMITRAILER VAN COO SUPPLY 12T 4WHL M129A2	39	1,562	39	1,562	--	---
HI MOB MULTI-PURP WHLD VEH (HMMWV)(MYP)	5,847	242,737	5,847	242,737	--	---
FAMILY OF MEDIUM TACTICAL VEH (MYP)	256	25,815	256	13,499	--	-12,316
FAMILY OF HEAVY TACTICAL VEHICLES (MYP)	945	464,258	945	458,258	--	-6,000
MEDIUM TRUCK EXTENDED SVC PGM(ESP) (	--	17,615	--	17,615	--	---
MODIFICATION OF IN SVC EQUIP	--	21,826	--	14,068	--	-7,758
ITEMS LESS THAN $2.0M (TAC VEH)	--	94	--	94	--	---
NON-TACTICAL VEHICLES						
PASSENGER CARRYING VEHICLES	16	951	16	951	--	---
GENERAL PURPOSE VEHICLES	--	951	--	951	--	---
SPECIAL PURPOSE VEHICLES	--	951	--	951	--	---
SUPPORT EQUIPMENT AND FACILITIES						
SYSTEM FIELDING SUPPORT PEO	--	6,572	--	6,572	--	---
PROJECT MANAGEMENT SUPPORT	--	1,588	--	1,588	--	---
SYSTEM FIELDING SUPPORT (TACOM)	--	1,304	--	1,304	--	---
SPARES AND REPAIR PARTS	--	10,046	--	5,546	--	-4,500
TOTAL, TACTICAL AND SUPPORT VEHICLES		800,408		769,834		-30,574
COMMUNICATIONS AND ELECTRONICS EQUIPMENT						
COMM - JOINT COMMUNICATIONS						
JCSE EQUIPMENT (USREDCOM)	--	1,000	--	1,000	--	---
COMM - SATELLITE COMMUNICATIONS						
DEFENSE SATELLITE COMMUNICATIONS SYSTEM	--	85,088	--	72,288	--	-12,800
SAT TERM, ADVANCED MPK UHF	195	7,940	195	7,940	--	---
NAVSTAR GLOBAL POSITIONING SYSTEM	7,107	42,428	7,107	42,428	--	---
GROUND COMMAND POST	--	12,158	--	---	--	-12,158
MOD OF IN-SVC EQUIP (TAC SAT)	--	9,873	--	9,873	--	---
COMM - C3 SYSTEM						
COMMAND CENTER IMPROVEMENT PROG (CCIP)	--	3,103	--	3,103	--	---
STD THEATER CMD & CONTROL SYS (STACCS)	--	5,744	--	5,744	--	---
WWMCCS INFORMATION SYSTEM (WIS)	--	7,501	--	7,501	--	---
COMM - COMBAT COMMUNICATIONS						
ARMY DATA DISTRIBUTION SYSTEM (ADDS)	--	21,978	--	66,978	--	+45,000
MOBILE SUBSCRIBER EQUIP (MSE)	--	45,787	--	31,787	--	-14,000
SINCGARS FAMILY	--	352,465	--	352,465	--	---
SW ASIA COMM INFRASTRUCTURE	--	1,485	--	1,485	--	---
EAC COMMUNICATIONS	--	10,229	--	9,029	--	-1,200
MOD OF IN-SVC EQUIP (EAC COMM)	--	18,997	--	18,997	--	---
C-E CONTINGENCY/FIELDING EQUIP	--	10,243	--	10,243	--	---
INFORMATION SECUTITY						
TSEC - INFORMATION SYSTEM SECURITY	--	50,654	--	50,654	--	---
COMM - LONG HAUL COMMUNICATIONS						
TERRESTRIAL TRANSMISSION	--	1,377	--	---	--	-1,377
C-E FACILITIES/PROJECTS	--	1,442	--	1,442	--	---
DEFENSE DATA NETWORK (DDN)	--	5,930	--	5,930	--	---
ELECTROMAG COMP PROG (EMCP)	--	486	--	486	--	---
WW TECH CON IMP PROG (WWTCIP)	--	1,310	--	1,310	--	---
COMM - BASE COMMUNICATIONS						
INFORMATION SYSTEMS	--	26,208	--	26,208	--	---
DEFENSE MESSAGE SYSTEM (DMS)	--	8,293	--	8,293	--	---
LOCAL AREA NETWORK (LAN)	--	17,467	--	17,467	--	---
PENTAGON TELECOM CTR (PTC)	--	3,498	--	3,498	--	---
ELECT EQUIP - NAT FOR INT PROG (NFIP)						
FOREIGN COUNTERINTELLIGENCE PROG (FC	--	287	--	287	--	---
GENERAL DEFENSE INTELL PROG (TIARA)	--	40,077	--	39,077	--	-1,000
ITEMS LESS THAN $2.0M (INTEL SPT)	--	3,067	--	3,067	--	---
ELECT EQUIP - TACT INT REL ACT (TIARA)						
ALL SOURCE ANALYSIS SYS (ASAS)	--	29,579	--	16,079	--	-13,500
COMMANDERS TACTICAL TERM (CTT)	8	6,487	8	6,487	--	---
HF COMINT SYSTEM (TIARA)	1	10,817	1	10,817	--	---
IMAGERY PROCESSING SYSTEM (IPS)	--	1,927	--	1,927	--	---
JOINT STARS (ARMY) (TIARA)	--	57,917	--	57,917	--	---
DIGITAL TOPOGRAPHIC SPT SYS (DTSS)	--	14,179	--	9,179	--	-5,000
TACT ELEC SURV SYS (TESS) (TIARA)	--	7,229	--	7,229	--	---
TROJAN (TIARA)	--	8,815	--	8,815	--	---
MOD OF IN-SVC EQUIP (INTELL SPT)	--	15,824	--	15,824	--	---
ELECT EQUIP - ELECTRONIC WARFARE (EW)						
CLOSE COMBAT DECOYS	--	1,156	--	1,156	--	---
MOD OF IN-SVC EQUIP (EW)	--	8,007	--	8,007	--	---
LESS THAN $2.0M (EW) CMP GEN	--	1,211	--	1,211	--	---
ELECT EQUIP - TACTICAL SURV. (TAC SURV)						
LT SPEC DIV INTERIM SENSOR (LSDIS)	--	1,914	--	1,914	--	---
NIGHT VISION DEVICES	--	91,414	--	86,314	--	-5,100
PHYSICAL SECURITY SYSTEMS	--	11,141	--	11,141	--	---
ARTILLERY ACCURACY EQUIP	--	16,398	--	16,398	--	---
MOD OF IN-SVC EQUIP (TAC SURV)	--	37,792	--	37,792	--	---
INTEGRATED MET SYS SENSORS (IMETS)	--	6,452	--	1,452	--	-5,000

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
ELECT EQUIP - TACTICAL C2 SYSTEMS						
ADV FIELD ARTILLERY TACT DATA SYS (AFATDS)	533	24,892	--	---	-533	-24,892
FIRE SUPPORT ADA CONVERSION	300	22,536	300	22,536	--	---
INTERIM FIRE SPT AUTOMATIC SYSTEM (I	397	11,487	397	11,487	--	---
CMBT SVC SUPT CONTROL SYS (CSSCS)	100	12,833	--	---	-100	-12,833
CORPS/THEATER ADP SVC CTR (CTASC)	--	6,788	--	6,788	--	---
FAAD C2	--	10,800	--	10,800	--	---
FAAD - GBS	--	---	--	42,700	--	+42,700
FORWARD ENTRY DEVICE (FED)	--	23,157	--	23,157	--	---
LIFE CYCLE SOFTWARE SUPPORT (LCSS)	--	1,810	--	1,810	--	---
LOGTECH	--	4,790	--	4,790	--	---
ISYSCON EQUIPMENT	--	958	--	958	--	---
STAMIS TACTICAL COMPUTERS (STACOMP)	--	43,479	--	43,479	--	---
ELECT EQUIP - AUTOMATION						
AUTOMATED DATA PROCESSING EQUIP	--	62,784	--	62,784	--	---
RESERVE COMPONENT AUTOMATION SYS (RCAS)	--	182,398	--	182,398	--	---
ELECT EQUIP - AUDIO VISUAL SYS (A/V)						
AFRTS	--	4,386	--	4,386	--	---
ITEMS LESS THAN $2.0M (A/V)	--	5,222	--	5,222	--	---
ELECT EQUIP-TEST MEAS&DIAG EQUIP (TMDE)						
CALIBRATION SETS EQUIPMENT	--	14,682	--	14,682	--	---
INTEGRATED FAMILY OF TEST EQUIP (IFTE)	--	47,966	--	47,966	--	---
TMDE MODERNIZATION (TMOD)	--	15,276	--	15,276	--	---
ELECT EQUIP - SUPPORT						
INITIAL SPARES - PEO CCS	--	20,080	--	13,680	--	-6,400
INITIAL SPARES - PEO COMM	--	44,577	--	38,577	--	-6,000
INITIAL SPARES - PEO IEW	--	18,419	--	18,419	--	---
INITIAL SPARES - PEO STAMIS	--	2,151	--	2,151	--	---
INITIAL SPARES - NON PEO	--	13,560	--	13,560	--	---
ARMY PRINTING AND BINDING EQUIPMENT	--	5,914	--	5,914	--	---
INSTALLATION C4 UPGRADE (ICU)	--	4,001	--	4,001	--	---
PRODUCTION BASE SUPPORT (C-E)	--	765	--	765	--	---
CONTRACT ADMINISTRATION/AUDIT-OPA	--	69,219	--	---	--	-69,219
TOTAL, COMMUNICATIONS AND ELECTRONICS EQUIPMENT		1,797,360		1,695,581		-101,779
OTHER SUPPORT EQUIPMENT						
CHEMICAL DEFENSIVE EQUIPMENT						
SIMP COLL PROT EQUIP M20	134	1,527	134	1,527	--	---
COLL PROT EQUIP, NBC TEMPER, TENT M2	--	4,366	--	4,366	--	---
MASK, PROTECTIVE, NBC M40/M42	--	43,795	--	43,795	--	---
IMPROVED CHEMICAL AGENT MONITOR	--	1,926	--	1,926	--	---
DECONTAMINATE APP PWR DR LT WT M17	515	7,228	515	7,228	--	---
RADIATION MONITORING SYSTEM (OPA-3)	--	8,291	--	8,291	--	---
BRIDGING EQUIPMENT						
ENGINEER (NON-CONSTRUCTION) EQUIPMENT						
DISPENSER, MINE M139	186	16,933	186	16,933	--	---
DETECTING SET, MINE, AN/PSS-12	4,104	5,555	--	---	-4,104	-5,555
COMBAT SERVICE SUPPORT EQUIPMENT						
AIR CONDITIONERS VARIOUS SIZE/CAPACITY	--	9,317	--	9,317	--	---
STANDARD INTEGRATED CMD POST SYSTEM	--	34,475	--	27,000	--	-7,475
SOLDIER ENHANCEMENT	--	11,529	--	11,000	--	-529
ITEMS LESS THAN $2.0M (CSS-EQ)	--	2,092	--	2,092	--	---
XM56 SMOKE GENERATOR SYSTEM	--	---	--	9,800	--	+9,800
PETROLEUM EQUIPMENT						
TANK ASSY, FAB COLLAPS, 20,000 GAL POL	458	2,256	458	2,256	--	---
PUMP ASSY LIQ GAS WHL 4 IN OUT 350 GPM	97	1,222	97	1,222	--	---
INLAND PETROLEUM DISTRIBUTION SYSTEM	--	3,772	--	3,772	--	---
ITEMS LESS THAN $2.0M (POL)	--	6,408	--	6,408	--	---
WATER EQUIPMENT						
ITEMS LESS THAN $2.0M (WATER EQ)	--	3,847	--	3,847	--	---
MEDICAL EQUIPMENT						
COMBAT SUPPORT MEDICAL	--	19,561	--	11,000	--	-8,561
MAINTENANCE EQUIPMENT						
ITEMS LESS THAN $2.0M (MAINT EQ)	--	7,063	--	7,063	--	---
CONSTRUCTION EQUIPMENT						
COMPACTOR HI-SPEED TAMP SELF PROP (CCE)	109	13,383	109	13,383	--	---
ITEMS LESS THAN $2.0M (CONST EQUIP)	--	3,851	--	3,851	--	---
RAIL FLOAT CONTAINERIZATION EQUIPMENT						
RAILWAY CAR, FLAT, 100 TON	80	7,876	80	7,876	--	---
ITEMS LESS THAN $2.0M (FLOAT/RAIL)	--	2,870	--	2,870	--	---
GENERATORS						
GENERATORS AND ASSOCIATED EQUIP	--	35,685	--	30,000	--	-5,685
MATERIAL HANDLING EQUIPMENT						
ITEMS LESS THAN $2.0M (MHE)	--	5,919	--	5,919	--	---
TRAINING EQUIPMENT						
COMBAT TRAINING CENTERS SUPPORT	--	12,975	--	12,975	--	---
TRAINING DEVICES, NONSYSTEM	--	79,650	--	79,650	--	---
SYSTEM FIELDING SUPPORT (OPA-3)	--	15,168	--	15,168	--	---
SPARES AND REPAIR PARTS	--	7,182	--	7,182	--	---
BASE LEVEL COM'L EQUIPMENT	--	13,603	--	13,603	--	---
ARMS CONTROL COMPLIANCE	--	10,471	--	10,471	--	---
COMBINED DEFENSE IMPROVEMENT PROJECT (CDIP	--	2,711	--	2,711	--	---
MODIFICATION OF IN-SVC EQUIPMENT (OPA-3)	--	41,072	--	41,072	--	---
PRODUCTION BASE SUPPORT (OTH)	--	1,908	--	1,908	--	---
INDUSTRIAL MODERNIZATION INCENTIVE P	--	4,017	--	4,017	--	---
SPECIAL EQUIPMENT FOR USER TESTING	--	4,928	--	4,928	--	---
NATURAL GAS UTILIZATION	--	---	--	16,000	--	+16,000
TOTAL, OTHER SUPPORT EQUIPMENT		453,513		451,518		-1,995
RAISE O & M PURCHASE THRESHOLD	--	---	--	-12,000	--	-12,000
TOTAL, OTHER PROCUREMENT, ARMY		3,051,281		2,904,933		-146,348

COMMITTEE RECOMMENDATIONS

AUTHORIZATION CHANGES

The Committee recommends the following changes in the budget estimate, in accordance with House and/or Senate authorization action:

[In thousands of dollars]

	Budget request	Committee recommended	Change from request
Other procurement, Army:			
EAC communications	10,229	9,029	−1,200
Digital topographic spt sys (DTSS)	14,179	9,179	−5,000
Initial spares—PEO CCS	20,050	13,650	−6,400
Initial spares—PEO comm	44,577	39,577	−5,000
Contract administration/audit—OPA	69,219		−69,219
Raise O&M purchase threshold		−12,000	−12,000

TACTICAL AND SUPPORT VEHICLES

BUDGET JUSTIFICATION MATERIAL

For the second year in a row, the documentation supporting the budget request for this budget activity (and apparently only this budget activity) has been mysteriously incomplete. This oversight has necessitated a separate request to the Army for the required information and subsequent integration into the rest of the documentation. The Committee has made its justification material requirements quite clear and over the years there has been no problem. While the oversight of the last two years may be a mystery, it is also intolerable. The Committee expects this situation to be resolved in future budget submissions or the Department will learn quite clearly just why this documentation is necessary.

FAMILY OF MEDIUM TACTICAL VEHICLES

The Army budgeted $25,815,000 for procurement of the Family of Medium Tactical Vehicles. The budgeted amount was intended to support this program at the minimum level under the current multiyear contract until initial production difficulties and delays were resolved. The Committee supports this concept. However, the Committee recently approved a transfer of $12,316,000 into this program from foreign military sale receipts from sales of older trucks. Accordingly, the Committee recommends $13,499,000, a reduction of $12,316,000 which is offset by the transfer.

FAMILY OF HEAVY TACTICAL VEHICLES

The Army budgeted $464,258,000 for the procurement of 945 Palletized Loading System trucks and 12,432 flatracks. The Committee recommends $458,258,000, a reduction of $6,000,000. The reduction is applied to engineering changes which are funded at more than twice the rate of last year. The Committee believes that this increase is unjustified in the last year of a multiyear procurement.

The Committee notes that the Defense Department's Director of Operational Test and Evaluation recently issued a report which concluded that the PLS failed to meet certain requirements during testing. The Army disagreed with this report. The Committee directs that no additional PLS procurement funds be obligated until the Secretary of Defense or his delegate in the Office of the Secretary of Defense submits to the Committee a certification that the PLS system meets the requirements for full production.

MODIFICATION OF IN-SERVICE EQUIPMENT

The Army budgeted $21,826,000 for modification of in-service equipment. The Committee recommends $14,068,000, a reduction of $7,758,000. The $7,758,000 was included in the budget for a HMMWV conversion program. This denial is made without prejudice pending a review of overall HMMWV and CUCV requirement.

SPARE AND REPAIR PARTS

The Army budgeted $10,046,000 for spare and repair parts for tactical and support vehicles. The Committee recommends $5,546,000, a reduction of $4,500,000. The recommendation denies the request for HMMWV spares because this vehicle has been in production and fielded for about 10 years and sufficient initial retail stockage should be in place. In addition, there is uncertainty about the future configuration of the HMMWV.

COMMUNICATIONS AND ELECTRONICS EQUIPMENT

DEFENSE SATELLITE COMMUNICATION SYSTEM (DSCS)

The Army budgeted $85,088,000 for the Defense Satellite Communications System program. The Committee has deleted $12,800,000 due to favorable contract prices negotiated for funds already provided in fiscal years 1992 and 1993. The Committee recommends a total of $72,288,000 for DSCS program.

GROUND COMMAND POST

The Army budgeted $12,158,000 for the Ground Command Post program. Because of slippages in delivery of Ground Command Post terminals, funds provided in previous fiscal years should be sufficient to meet fiscal year 1994 requirements. Consequently, deletion of the entire $12,158,000 is recommended.

ARMY DATA DISTRIBUTION SYSTEM (ADDS)

The Army budgeted $21,978,000 for the Army Data Distribution System which is a command, control and communications network consisting of the Enhanced Position Location Reporting System (EPLRS) and the Army portion of the Joint Tactical Information Distribution System (JTIDS).

The Committee believes that both EPLRS and JTIDS are integral components of the Army's continuing communications modernization program and notes that the fiscal year 1994 request of $21,978,000 is significantly less than the fiscal year 1993 appropriated level of $56,297,000. The Committee has, therefore, included a total increase of $45,000,000 to the fiscal year 1994 re-

quest, $15,000,000 for the Army to continue EPLRS upgrades and $30,000,000 to begin a cost effective and gradual low rate initial procurement for JTIDS.

MOBILE SUBSCRIBER EQUIPMENT PROCUREMENT

Mobile Subscriber Equipment (MSE) is an area radio communications system providing Corps and Division communications support for mobile and stationary users. In fiscal year 1994, the Army requested a total of $45,787,000. While the Committee fully supports the MSE system, a portion of this request is for a video teleconferencing capability for which funds were already provided in fiscal year 1993 and the Army diverted them for other purposes. In addition, the Army has developed a lower cost in-house teleconferencing capability. Consequently, the Committee is recommending a reduction of $14,000,000 from the fiscal year 1994 request. Additional comments on the MSE program appear in the Operation and Maintenance section of this report.

TERRESTRIAL TRANSMISSION

The Army budgeted $1,377,000 for the Terrestrial Transmission program. The program provides long haul connectivity and equipment upgrades to terrestrial transmission systems. The Army has decided to defer two of the items funded in fiscal year 1993 pending additional research and planning. The fiscal year 1994 program can be funded with available funds. Thus the Committee recommends deletion of the fiscal year 1994 request of $1,377,000.

GENERAL DEFENSE INTELLIGENCE PROGRAM

The Army requested $40,077,000 for the General Defense Intelligence Program. The Committee recommends $39,077,000, a reduction of $1,000,000. Details are addressed in the classified report.

ALL SOURCE ANALYSIS SYSTEM (ASAS)

The Army budgeted $29,578,000 for the All Source Analysis System (ASAS) in fiscal year 1994. The Committee recommends $16,078,000, a reduction of $13,500,000 to the budget request. In accordance with the authorization committee, a reduction of $17,000,000 is taken to the ASAS Block I program. The Committee believes that given the reduced threat environment, and the availability of existing tactical intelligence fusion equipment, the fielding of an interim version of ASAS is not justified. The Committee has also provided an additional $3,500,000 only for the acquisition of communications and ADP equipment related to the upgrade program for the Single Source Processor—SIGINT workstations.

DIGITAL TOPOGRAPHIC SUPPORT SYSTEM

The Army requested $14,179,000 for the Digital Topographic Support System (DTSS). The Committee believes DTSS procurement can be delayed until the Army Tactical Command and Control System is fielded. Fiscal year 1994 funds are only to procure DTSS units for the seven high priority units identified by the

Army. The Committee recommends $9,179,000, a reduction of $5,000,000.

NIGHT VISION DEVICES

The Army budgeted $91,414,000 for Night Vision Devices. Two types of devices are funded in this program, the AN/PVS-6 and the AN/PVS-7. The budget request includes funds for Product Improvement Program (PIP) kits for the AN/PVS-6. Because of lower than anticipated per-unit costs in the fiscal year 1993 procurement, $3,900,000 of previously appropriated funds is available to be used to partially fund the PIP kits for fiscal year 1994 for the AN/PSV-6. Also, because of cost savings from lower than anticipated per unit costs of the AN/PVS-7 device, the Committee recommends a reduction of $1,200,000. The total recommended for the Night Division Devices program is $86,314,000, a reduction of $5,100,000 from the budget request.

INTEGRATED METEROLOGICAL SYSTEM SENSORS

The Army requested $6,452,000 for Integrated Meteorological System Sensors (IMETS). The Army's justification for fiscal year 1994 funding was to procure high priority systems for units in the United States, Europe and Korea. Additional fiscal year 1994 funds were requested to procure lower priority systems. Furthermore, the Committee has learned that deficiencies discovered during initial operational testing and evaluation will not be corrected until fiscal year 1994. Additionally, IMETS funding was recently used as a source of funds for a reprogramming. The Committee recommends $1,452,000, a reduction of $5,000,000.

ADVANCED FIELD ARTILLERY TACTICAL DATA SYSTEM

The Army requested $24,892,000 for the Advanced Field Artillery Tactical Data System (AFATDS) common hardware and software (CHS) procurement. The Committee recommends that the funds be deleted. Futhermore, the Committee directs that no funds are to be obligated in fiscal year 1994 for CHS2.

COMBAT SERVICES SUPPORT CONTROL SYSTEM

The Army requested $12,883,000 for the Combat Services Support Control System's common hardware and software (CHS) procurement. The Committee recommends that the funds be deleted. Futhermore, the Committee directs that no funds are to be obligated in fiscal year 1994 for CHS2.

FORWARD AREA AIR DEFENSE GROUND BASED SENSOR

The Committee recommends an increase of $42,700,000 for the Forward Area Air Defense Ground Based Sensor program. Additional comments on this program appear in the C3I section of the report.

INTEGRATED FAMILY OF TEST EQUIPMENT (IFTE)

The Committee has long been supportive of the Army's 1986 decision to adopt a single standardized family of test equipment for the electronic components of its weapon systems. Fielding one test-

er for multiple weapon systems is economically and operationally desirable in an era of rapidly declining defense budgets. The Committee is encouraged that progress is being made in the fielding of the Integrated Family of Test Equipment (IFTE).

However, the Committee is concerned that the Army is not strictly enforcing its single common tester policy for all weapon systems especially with regard to tracked vehicles. To ensure that the one standard tester policy is not deviated from except on the basis of sound economic justification, the Committee directs that, consistent with existing Army policy, no automatic test system other than IFTE may be used to support Army tracked vehicles.

The Secretary of the Army may waive this policy by certifying to the Committees on Appropriations that a determination based on life cycle cost benefit analysis has been made that the Army will receive better value by procuring a tester other than IFTE for its tracked vehicles. It is the sense of the Committee that this waiver authority not be used without the benefit of rigorous analysis on a case by case basis. Furthermore, the Secretary's waiver shall not be issued until at least 30 days after the Congress has received the required certification.

CONTRACT ADMINISTRATION/AUDIT

The Army budgeted $69,219,000 for Contract Administration/Audit in the Other Procurement, Army account. The Committee recommends deletion of these funds as discussed elsewhere in this report.

OTHER SUPPORT EQUIPMENT

DETECTING SET, MINE AN/PSS-12

The Army budgeted $5,555,000 for the purchase of 4,100 hand held mine detectors. The mine detector has the capacity to detect land mines in all types of soil. Funds provided in fiscal years 1991–1993 have enabled the Army to acquire the total number of mine detecting units established in the Army's total Approved Acquisition Objective (AAO). The Committee recommends the deletion of the fiscal year 1994 request in light of the absence of a validated requirement for additional units.

STANDARD INTEGRATED COMMAND POST SYSTEM

The Army budgeted $34,475,000 for the Standard Integrated Command Post System (SICPS) which is a standardized group of shelters to house the Army Tactical Command and Control Access system. The Army requested and received $7,475,000 in fiscal year 1993 to procure sixty eight of the Rigid Wall Module type of shelters. These funds have not been expended. The Committee recommends $27,000,000, a reduction of $7,475,000 for the SICPS program. The available funds from fiscal year 1993 combined with the new funds in fiscal year 1994, will enable the Army to procure the 275 rigid wall shelters planned for purchase in fiscal year 1994.

SOLDIERS ENHANCEMENT

The Army budgeted $11,529,000 for the Soldiers Enhancement program. The Committee recommends $11,000,000 for the program, a reduction of $529,000, because of an overstated rate of inflation used in estimating the cost of this program for fiscal year 1994.

M–56 SMOKE GENERATOR SYSTEM

The committee recommends $9,800,000 to initiate Low Rate Initial Production (LRIP) of the M–56 Smoke Generator System. The M–56 provides a large visual and infrared screening capability which enhances the survivability of our weapon systems on the battlefield.

COMBAT SUPPORT MEDICAL

The Army budgeted $19,551,000 for the Combat Support Medical programs including $8,551,000 for a field medical oxygen generating and distribution system. Because of development unit test failure, the Army has not yet procured the units budgeted for in fiscal year 1992 and fiscal year 1993 for the field medical oxygen generating and distribution system. Because of the availability of these funds, the Committee recommends $11,000,000 for the Combat Support Medical program, a reduction of $8,551,000 from the budget request.

GENERATORS AND ASSOCIATED EQUIPMENT

The Army budgeted $35,685,000 for the procurement of a new generation of tactical quiet field power generators, acquisition of trailers and depot assembly for mounting the larger model generators on the trailers. The fiscal year 1994 request includes $5,685,000 for depot assembly. However the first delivery of generators does not occur until July, 1995. The Committee recommends $30,000,000 for Generators and Associated Equipment, a reduction of $5,685,000 from the budget request.

NATURAL GAS UTILIZATION EQUIPMENT

The Committee recommends an increase of $16,000,000 for Natural Gas Utilization Equipment. This program is discussed earlier in the report.

AIRCRAFT PROTECTION INITIATIVE

The Committee is pleased to learn that the Army intends to construct shelters to protect its helicopters from storm damage. Failure to expedite construction of these shelters has made it necessary for the Army to expend substantial funds to repair helicopter damage that could have otherwise been avoided.

It is the Committee's understanding that the Army plans to use Automatic Building Machine produced structures, but wishes to use private contractors, rather than troop labor, to do the construction. The only apparent disadvantage to that approach is that private sector contractors do not have the Super-Span model of Automatic Building Machines required for this project. Further, it would be difficult for a contractor to reasonably amortize the cost

of purchasing these machines for only a few construction projects. To facilitate the construction of these facilities the Committee believes that these machines should be provided to the selected contractors as government furnished equipment. Importantly, following construction of these facilities the Army would then have these machines available in its inventory for other missions.

The approach will require the Army to purchase additional Super-spans since it only has one in its inventory and prior year funds appropriated for this purpose have not been obligated. Therefore, the Committee directs the Army to use funds previously appropriated for this program to procure 12 Super-span Automatic Building Machines. Also, the Committee believes that the use of some troop labor in the construction of these structures would be beneficial for training purposes.

AIRCRAFT PROCUREMENT, NAVY

Appropriations, 1993	$6,026,213,000
New obligational authority, 1994:	
Estimate	6,132,604,000
Recommended	5,664,216,000
Decrease	468,388,000

This appropriation provides funds for the procurement of aircraft and related supporting equipment and programs. Included are funds for flight simulators and equipment to modify in-service aircraft to extend their service life, eliminate safety hazards, and improve their operational effectiveness. Additionally, spares and ground support equipment for all end items procured by this appropriation are included. Funds are also provided for procurement of material and effort for planned 1995 programs which must be ordered in 1994 due to leadtime considerations.

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
AIRCRAFT PROCUREMENT, NAVY						
COMBAT AIRCRAFT						
EA-6B/RESFG (ELECTRONIC WARFARE) PROWLER	--	77,988	--	77,988	--	---
AV-8B (V/STOL) HARRIER	4	129,801	4	129,801	--	---
AV-8B (V/STOL) HARRIER (AP-CY)	--	15,000	--	15,000	--	---
F/A-18C/D (FIGHTER) HORNET (MYP)	36	1,492,734	36	1,521,534	--	+28,800
F/A-18C/D (FIGHTER) HORNET (MYP) (AP-CY)	--	252,560	--	127,660	--	-124,900
CH/MH-53E (HELICOPTER) SUPER STALLION	12	281,804	12	276,404	--	-5,400
CH/MH-53E (HELICOPTER) SUPER STALLION (AP-CY)	--	15,000	--	22,400	--	+7,400
AH-1W (HELICOPTER) SEA COBRA	12	143,274	12	143,274	--	---
SH-60B (ASW HELICOPTER) SEAHAWK	7	180,276	7	180,276	--	---
SH-60B (ASW HELICOPTER) SEAHAWK (AP-CY)	--	27,150	--	57,150	--	+30,000
SH-60F (CV ASW HELICOPTER)	8	140,838	8	140,838	--	---
SH-60F (CV ASW HELICOPTER) (AP-CY)	--	36,833	--	36,833	--	---
E-2C (EARLY WARNING) HAWKEYE	--	27,001	--	27,001	--	---
TOTAL, COMBAT AIRCRAFT		2,838,427		2,774,327		-64,100
AIRLIFT AIRCRAFT						
TOTAL, AIRLIFT AIRCRAFT		---		---		---
TRAINER AIRCRAFT						
T-45TS (TRAINER) GOSHAWK	12	258,225	12	258,225	--	---
T-45TS (TRAINER) GOSHAWK (AP-CY)	--	30,796	--	30,796	--	---
TOTAL, TRAINER AIRCRAFT		289,021		289,021		---
OTHER AIRCRAFT						
HH-60H (HELICOPTER) CSAR	9	144,146	9	144,146	--	---
TOTAL, OTHER AIRCRAFT		144,146		144,146		---
MODIFICATION OF AIRCRAFT						
A-6 SERIES	--	18,623	--	88,623	--	+48,000
EA-6 SERIES	--	21,868	--	21,868	--	---
AV-8 SERIES	--	22,797	--	22,797	--	---
F-14 SERIES	--	116,213	--	9,213	--	-107,000
ADVERSARY	--	197	--	197	--	---
ES-3 SERIES	--	10,000	--	10,000	--	---
F/A-18 SERIES	--	46,833	--	46,833	--	---
H-46 SERIES	--	74,321	--	76,013	--	+1,692
H-53 SERIES	--	37,382	--	36,464	--	+2,282
SH-60 SERIES	--	46,084	--	43,084	--	---
H-1 SERIES	--	74,944	--	79,000	--	+4,000
H-3 SERIES	--	2,019	--	2,019	--	---
EP-3 SERIES	--	34,228	--	34,228	--	---
P-3 SERIES	--	214,304	--	11,266	--	-203,038
S-3 SERIES	--	12,910	--	27,910	--	+15,000
E-2 SERIES	--	124,868	--	124,863	--	---
TRAINER A/C SERIES	--	11,506	--	11,506	--	---
C-130 SERIES	--	13,631	--	13,631	--	---
FEWSG	--	26,506	--	11,506	--	-15,000
CARGO/TRANSPORT A/C SERIES	--	15,010	--	15,010	--	---
E-6 SERIES	--	118,481	--	118,481	--	---
EXECUTIVE HELICOPTERS SERIES	--	52,293	--	52,293	--	---
VARIOUS	--	94	--	94	--	---
POWER PLANT CHANGES	--	9,511	--	9,511	--	---
MISC FLIGHT SAFETY CHANGES	--	87	--	87	--	---
COMMON ECM EQUIPMENT	--	68,774	--	73,774	--	+6,000
COMMON AVIONICS CHANGES	--	88,228	--	88,228	--	---
TOTAL, MODIFICATION OF AIRCRAFT		1,284,883		1,016,864		-248,019
AIRCRAFT SPARES AND REPAIR PARTS						
SPARES AND REPAIR PARTS	--	903,107	--	866,507	--	-37,000
TOTAL, AIRCRAFT SPARES AND REPAIR PARTS		903,107		866,507		-37,002
AIRCRAFT SUPPORT EQUIPMENT AND FACILITIE						
AIRCRAFT SUPPORT EQUIPMENT AND FACILITIES						
COMMON GROUND EQUIPMENT	--	462,815	--	462,815	--	---
AIRCRAFT INDUSTRIAL FACILITIES	--	37,938	--	37,938	--	---
WAR CONSUMABLES	--	18,146	--	18,140	--	---
OTHER PRODUCTION CHARGES	--	41,486	--	41,486	--	---
SPECIAL SUPPORT EQUIPMENT	--	18,542	--	18,542	--	---
FIRST DESTINATION TRANSPORTATION	--	4,711	--	4,711	--	---
CONTRACT ADMIN/AUDIT	--	118,000	--	---	--	-118,000
TOTAL, AIRCRAFT SUPPORT EQUIPMENT AND FACILITIES		693,200		573,011		-118,000
TOTAL, AIRCRAFT PROCUREMENT, NAVY		6,132,064		5,664,216		-468,000

Committee Recommendations

Combat Aircraft

NAVY AIRBORNE EARLY WARNING PLATFORMS

The Committee is concerned about the Department of the Navy's long term plans for procurement of AEW airframes and sensors and feels a study should be undertaken to determine the most cost effective and operationally advantageous means of detecting, tracking and targeting threats. The study should be undertaken by an independent agency, such as the Center for Naval Analysis, with the Navy reporting the results of the study to the Committee by 1 June 1994. This action is not intended to impede the ongoing development of the Cooperative Engagement concept and associated equipment.

EA–6B PROWLER

The Navy has been developing new electronics for the EA–6B PROWLER for the past few years with the expectation of increasing the capability of this important aviation asset. In the past the Congress has supported this program as a cost effective way to increase the survivability of other Navy assets.

The Committee continues to believe the Navy's program to increase the capability of sensors and avionics, as well as remanufacture of the airplane, is going to be cost-effective and timely. In particular, the Committee is encouraged by the progress made thus far as evidenced by the reports issued upon completion of development testing and operational evaluation. The technical test summary stated that the systems ". . . demonstrated excellent potential for the tactical jamming mission due to the magnitude of improvement . . . over the current EA–6B ICAP–II variants . . ." And the operational test summary stated the systems were ". . . assessed to be potentially operationally effective and operationally suitable."

Accordingly, the Committee believes the current request of $77,586,000 should be combined with previously appropriated funds and used to support an anticipated favorable low rate initial production decision as soon as possible. The Committee further urges the Navy to continue the EA–6B ADVCAP production program and ensure that all necessary funds are programmed in the fiscal year 1995–1999 time frame to allow introduction of the ADVCAP EA–6B by 1997.

F/A–18 HORNET

The budget request included $1,492,734,000 for procurement of 36 F/A–18 aircraft in fiscal year 1994 and $252,569,000 for advance procurement to support multiyear procurement of the remaining preduction of F/A–18 C/D models.

The Committee recommends $1,521,534,000 for 36 aircraft in fiscal year 1994 and $127,669,000 for advance procurement associated with the fiscal year 1995 program. The funding adjustments reflect a decision to deny multiyear procurement authority, which requires an increase in full funding of $28,800,000 and a decrease in advance procurement funding of $124,900,000.

CH/MH-53E SUPER STALLION

The Committee recommends a reduction of $5,400,000 from the budget request of $281,884,000 for the CH/MH-53E program. The reduction reflects a decrease to the amount requested for price increases for government furnished equipment and denial of funds for engineering change orders. The Committee notes that this program has been over-priced in the past and in fact the cost of the fiscal year 1993 program is over $18 million less than originally requested last year. The Committee does not believe the reduction will in any way threaten acquisition of 12 helicopters or necessary spares and support equipment.

CH/MH-53E ADVANCE PROCUREMENT

The Committee recommends $22,400,000 for CH/MH-53E advance procurement, an increase of $7,400,000 to the budget request of $15,000,000. The additional funds are to be used to support increased procurement in fiscal year 1995 to achieve the approved inventory objective.

SH-60B ASW HELICOPTER ADVANCE PROCUREMENT

The Committee recommends $57,150,000 for SH-60B advance procurement. The amount previded is $30,000,000 more than requested and is to be used to procure mission avionics subsystems as authorized.

OTHER AIRCRAFT

HH-60H HELICOPTERS

The budget request included $144,146,000 for 9 helicopters to provide carrier-based combat search and rescue for downed pilots and special operations missions. This requirement has been validated by the experiences in Desert Storm and on subsequent deployments of 2 HH-60H helicopters aboard aircraft carriers. The Committee understands that one carrier has been deployed in the waters off Bosnia with 4 HH-60H helicopters, and that 2 of these aircraft are manned and maintained by crews from the Naval Reserves. Since the only such aircraft are in the Naval Reserves currently, all aircraft must be borrowed for these deployments. The Committee approves of such innovative efforts to develop a "Total Force" capability with these helicopters and affirms its strong support for maintaining adequate reserve capability, particularly in the mission of land-based combat rescue and the support of Navy Seal special operations during wartime. The Committee understands that similar land-based capability was provided exclusively by the Naval Reserves during Desert Shield/Desert Storm. However, the Committee is concerned about the difficulties of keeping reserve HH-60H's fully deployed on all carriers during peacetime operations. To provide the necessary flexibility to the Navy, the Committee recommends 9 aircraft in the fiscal year 1994 request for the active Navy.

MODIFICATION OF AIRCRAFT

A-6 SERIES MODIFICATIONS

The Committee recommends an increase of $46,000,000 to the budget request of $19,623,000 for a total of $65,623,000. The funding provided is to be used for modifications necessary to keep the A-6 aircraft fully operational until they are retired. In addition, the Navy is directed to continue integration and initial deployment of the AN/USH-42 mission recorder system to prove its utility.

F-14 SERIES MODIFICATIONS

The fiscal year 1994 budget request for F-14 series modifications is $116,213,000 of which $107,007,000 is for the structural maintenance and survivability block upgrade program. The Committee is concerned that the F-14 modernization program is not yet firmly defined and expects further review by the Navy to significantly alter the current Navy plan for which these funds are requested.

The Committee believes that embarking upon the upgrade program as proposed, before the program is firmly defined and has completed development, would be contrary to the overall goal of program risk reduction. Additionally, the Committee believes that waiting until all necessary and desired upgrades are defined and melded into one efficient modernization package is the more prudent course of action, rather than trying to tackle the issues on a piecemeal basis. Accordingly, the Committee recommends that the budget request be reduced by $107,000,000 reflecting a deferral of the upgrade program until it is defined and all necessary development and integration work has been completed.

P-3 SERIES MODIFICATIONS

The fiscal year 1994 budget request for P-3 series modifications totals $214,304,000 and includes two new and significant programs, the sustained readiness program and the ASUW improvement program.

The Committee has been concerned in the past with the direction the Navy has been pursuing with regard to aircraft for the Maritime Patrol Mission. The Committee continues to be concerned that the Navy is embarking upon force structure changes and modification programs which do not adequately address its long term needs.

The most recent example which justifies this concern is the plan for modernizing maritime patrol squadrons which was forwarded to the Committee on May 17, 1993. The plan called for 16 active and 9 reserve squadrons having only P-3C aircraft, all P-3B aircraft would be retired, and a sustained readiness program would be started to preserve the P-3C inventory. The Committees criticism of this plan hinges on two important facts. First, the sustained readiness program and the other maintenance efforts would only be accomplished at a rate of 16 aircraft per year, resulting in an inefficient 15 year program which would probably result in a significant number of aircraft never receiving the modifications thus aggravating the inventory shortfall. Second, the plan advocates a new mission and modernization plan for 68 aircraft, the AUSW improvement program, which will remove even more aircraft from the

operating squadrons over the next four years. A later plan submitted on September 2, 1993 deals with some of these concerns but still fails to answer all of the Committee's questions.

In the absence of a maritime patrol squadron plan which deals adequately with the overall goal of efficient modernization rates and full squadron inventories of 8 aircraft each, the Committee cannot endorse major expenditures for aircraft modifications. Accordingly, the Committee recommends a reduction of $203,038,000 from the budget request. The remaining funds, $11,266,000 may be used only for the global positioning system and the structural data recorder system.

S–3 SERIES MODIFICATIONS

The budget request included $12,910,000 for S–3 series modifications. The Committee is aware of a need for new mission recorder capability for the S–3 aircraft to record FLIR and ISAR data and believes the Navy should capitalize on its previous efforts to develop an A–6 mission recorder, the AN/USH–42. Therefore, the Committee recommends an increase of $15,000,000 to the S–3 modification program to be used only to initiate the procurement of AN/USH–42 mission recorders, modified to meet signal interpretation, post-flight mission reconstruction, and operator training needs of S–3 aircrews.

FEWSG SERIES MODIFICATIONS

The budget request includes $26,506,000 for modification of aircraft dedicated to the fleet electronic warfare support group (FEWSG). The Committee believes the FEWSG mission is important, but notes that one of the major modification programs planned is to install new systems, the AN/ALQ–170, on the A–6E platform. The Committee believes this program is inconsistent with the Navy's plan to retire all A–6 aircraft in the near term. The Committee therefore recommends no funding for the proposed alternatives and reduces the budget by $15,000,000 for a new total of $11,506,000.

COMMON ECM EQUIPMENT

The Committee recommends an increase of $8,000,000 to the budget request of $65,774,000 for common ECM Equipment. The increase is to be used only for continued procurement of the LAU–138/A launcher rail chaff dispenser system in fiscal year 1994.

NIGHT VISION LIGHTING SYSTEM

The Committee has increased funding for H–46, H–53, and H–1 helicopter modifications to allow for acceleration of efforts to install night vision compatible lighting systems. The Committee believes this important safety-of-flight program should be completed as soon as possible and understands that the funding provided, $8,019,000, will satisfy the requirement.

Aircraft Spares and Repair Parts

SPARES AND REPAIR PARTS

The Committee recommends a roduction of $37,600,000 in funding of spares for modifications. The Committee recommended reduction to various modification programs allows for a commensurate reduction in spares funding.

Aircraft Support Equipment and Facilities

CONTRACT ADMINISTRATION/AUDIT

For reasons explained at the beginning of the Procurement section of the report, the Committee recommends denial of the increase for contract administration and audit.

WEAPONS PROCUREMENT, NAVY

Appropriations, 1993	$3,760,697,000
New obligated authority, 1994:	
Estimate	3,040,260,000
Recommended	2,808,986,000
Decrease	231,274,000

This appropriation finances the procurement of strategic and tactical missiles, target drones, torpedoes, guns, associated support equipment, and the modification of in-service missiles, torpedoes, and guns

Program Recommended

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
WEAPONS PROCUREMENT, NAVY						
BALLISTIC MISSILES						
TRIDENT I	--	7,003	--	7,003	--	---
TRIDENT II	24	903,345	24	903,345	--	---
TRIDENT II (AP-CY)	--	146,251	--	146,251	--	---
SUPPORT EQUIPMENT AND FACILITIES						
MISSILE INDUSTRIAL FACILITIES	--	2,165	--	2,165	--	---
TOTAL, BALLISTIC MISSILES		1,120,284		1,120,284		---
OTHER MISSILES						
STRATEGIC MISSILES						
TOMAHAWK	216	340,200	216	340,200	--	---
TACTICAL MISSILES						
AMRAAM	44	80,118	44	80,118	--	---
HARPOON	75	90,300	75	90,300	--	---
STANDARD MISSILE	220	215,030	220	215,030	--	---
RAM	240	58,476	180	43,876	-60	-14,600
HELLFIRE	1,931	83,874	1,931	83,874	--	---
AERIAL TARGETS	--	114,407	--	114,407	--	---
DRONES AND DECOYS	--	---	--	15,000	--	+15,000
OTHER MISSILE SUPPORT	--	9,084	--	9,084	--	---
MODIFICATION OF MISSILES						
TOMAHAWK MODS	--	15,446	--	15,446	--	---
SPARROW MODS	--	36,003	--	36,003	--	---
SIDEWINDER MODS	--	10,220	--	10,220	--	---
HARPOON MODS	--	2,703	--	2,703	--	---
HARM MODS	--	95,667	--	95,667	--	---
STANDARD MISSILES MODS	--	14,461	--	8,327	--	-6,134
SUPPORT EQUIPMENT AND FACILITIES						
WEAPONS INDUSTRIAL FACILITIES	--	22,067	--	22,067	--	---
FLEET SATELLITE COMMUNICATIONS (NVP)	--	199,704	--	---	--	-199,704
CONTRACT ADMIN/AUDIT	--	30,000	--	---	--	-30,000
ORDNANCE SUPPORT EQUIPMENT						
ORDNANCE SUPPORT EQUIPMENT	--	6,084	--	6,084	--	---
TOTAL, OTHER MISSILES		1,319,510		1,094,115		-225,403
TORPEDOES AND RELATED EQUIPMENT						
MK-48 ADCAP TORPEDO (NVP)	186	180,125	186	180,125	--	---
MK-50 ALWT	--	21,419	--	38,419	--	+17,000
ASW TARGETS	--	17,907	--	8,000	--	-9,907
VERTICAL LAUNCHED ASROC (VLA)	46	22,083	46	32,083	--	+10,000
MOD OF TORPEDOES AND RELATED EQUIP						
MK-48 TORPEDO MODS	--	34,000	--	34,000	--	---
QUICKSTRIKE MINE	--	3,843	--	3,843	--	---
SUPPORT EQUIPMENT						
TORPEDO SUPPORT EQUIPMENT	--	37,827	--	37,827	--	---
ASW RANGE SUPPORT	--	24,106	--	24,106	--	---
SUPPORT EQUIPMENT						
FIRST DESTINATION TRANSPORTATION	--	7,874	--	7,874	--	---
TOTAL, TORPEDOES AND RELATED EQUIPMENT		298,301		275,704		+17,413
OTHER WEAPONS						
GUNS AND GUN MOUNTS						
SMALL ARMS AND WEAPONS	--	837	--	837	--	---
MODIFICATION OF GUNS AND GUN MOUNTS						
CIWS MODS	--	41,565	--	41,565	--	---
5/54 GUN MOUNT MODS	--	8,033	--	8,033	--	---
MK-75 76MM GUN MOUNT MODS	--	2,700	--	2,700	--	---
MODS UNDER $2 MILLION	--	1,301	--	1,301	--	---
TOTAL, OTHER WEAPONS		52,836		52,836		---
OTHER ORDNANCE						
AIR LAUNCHED ORDNANCE						
GENERAL PURPOSE BOMBS	--	51,134	--	51,134	--	---
2.75 INCH ROCKETS	--	13,327	--	13,327	--	---
MACHINE GUN AMMUNITION	--	7,300	--	1,600	--	-5,700
PRACTICE BOMBS	--	10,862	--	20,862	--	+10,000
SHIP ORDNANCE						
5 INCH/54 GUN AMMUNITION	--	60,101	--	45,101	--	-15,000
CIWS AMMUNITION	--	1,711	--	1,711	--	---
76MM GUN AMMUNITION	--	15,703	--	9,000	--	-6,703
OTHER SHIP GUN AMMUNITION	--	16,862	--	16,862	--	---
SMALL ARMS & LANDING PARTY AMMUNITION	--	11,466	--	11,466	--	---
PYROTECHNIC AND DEMOLITION	--	13,466	--	13,466	--	---
DEMILITARIZATION	--	6,712	--	---	--	-6,712
TOTAL, OTHER ORDNANCE		203,065		185,301		-23,204
SPARES AND REPAIR PARTS	--	67,836	--	67,836	--	---
TOTAL, WEAPONS PROCUREMENT, NAVY		3,040,200		2,865,865		-231,274
TRANSFER		---		---		---

COMMITTEE RECOMMENDATIONS

AUTHORIZATION CHANGES

The Committee recommends the following changes in accordance with authorization action:

[In thousands of dollars]

Item	Budget request	Committee recommendation	Change from budget
RAM	58,476	43,876	−14,600
ASW Targets	17,587	8,000	−9,587

TACTICAL MISSILES

IMPROVED TACTICAL AIR LAUNCHED DECOY

The Committee recommends $15,000,000 to support continued acquisition of the Improved Tactical Air Launched Decoy (ITALD). The Committee has long supported the ITALD program as a means of addressing requirement shortfalls caused by improvements to threat air defense systems. The additional funding provided by the Committee will enable the Navy to avoid a preduction break after low rate initial preduction of the decoy has been completed.

MODIFICATION OF MISSILES

STANDARD MISSILE

The Committee recommends $8,327,000 for Standard missile modifications, a reduction of $6,124,000 to the fiscal year 1994 budget request. The Committee denies funding for Block IIIB modifications. It is the Committee's understanding that the inventory requirements for the Standard missile may change substantially after the Navy has concluded its POM 1996 review. The Committee believes that pending the results of the review, a Block IIIB modification program is premature.

SUPPORT EQUIPMENT AND FACILITIES

FLEET SATELLITE COMMUNICATIONS

The Navy has requested $159,784,000 in fiscal year 1994 to continue the multi-year procurement of the Ultra-High Frequency communications satellite program. Due to the launch failure of the very first satellite, the Navy has been reimbursed $137.6 million in cash, and been given a credit of $61.4 million by the prime contractor. Pending resolution of the requirement for a replacement satellite as well as resolution of the legal uses to which both the cash and the credit can be put, the Committee has deleted the entire $159,784,000 request on the premise that these reimbursements will be available to offset any fiscal year 1994 requirement for funds.

CONTRACT ADMINISTRATION/AUDIT

For reasons explained at the beginning of the Procurement section of the report, the Committee recommends denial of the $59,895,000 budgeted for contract administration and audit.

TORPEDOES AND RELATED EQUIPMENT

MK–50 ADVANCED LIGHTWEIGHT TORPEDO

The Committee recommends $38,419,000 for the MK–50 torpedo program, an addition of $17,000,000 to the budget request. The Committee is concerned with the Navy's proposal to terminate production of the MK-50 in fiscal year 1994, only to reconstitute a production base at the turn of the century. The Committee understands that the Department of the Navy is currently conducting a review of the torpedo industrial base. Until the results of the review are available the Committee believes it would be less risky and ultimately less expensive to maintain the lightweight torpedo industrial base by funding the MK–50 production line at a minimum sustaining rate in fiscal year 1994.

VERTICAL LAUNCHED ASROC (VLA)

The Committee recommends $32,682,000 for the Vertical Launched ASROC (VLA) program, an increase of $10,000,000 to the budget request. It is the Committee's understanding that the Navy has a validated requirement for 40 VLA systems a year through fiscal year 1999. In light of the stability of this requirement, the Committee has provided additional funding for long-lead material to support a cost-effective acquisition of critical components over the life of the program. The Committee believes that this approach will maximize cost savings to the Navy as well as protect the stability of the vendor base.

TORPEDO FUEL

The Navy currently maintains one producer of fuel for the MK46 and MK48 torpedo systems at the Naval Ordnance Station, Indian Head Division. The Committee understands that this fuel is produced commercially as well. Given past erratic demand, the Committee is concerned about the risk involved with maintaining only one producer of torpedo fuel. The Department of the Navy is therefore directed to submit a report to the Committee setting forth the Navy's strategy for the continued acquisition of torpedo fuel. The report should address at a minimum the annual requirement for torpedo fuel through the end of the century and the relative cost effectiveness of maintaining a commercial as well as an organic supplier base. The report shall be submitted no later than March 15, 1994.

OTHER ORDNANCE

MACHINE GUN AMMUNITION

The Navy budgeted $7,355,000 for the procurement of machine gun ammunition. The Committee recommends $1,566,000, a reduction of $5,789,000. The recommendation deletes funding for the

PGU–27/B ($1,712,000), the PGU–32 ($1,287,000), and the PGU–27/B ($2,790,000) because the Navy overstated training consumption.

PRACTICE BOMBS

The Navy budgeted $10,862,000 for the procurement of practice bombs. The Committee recommends $20,862,000, an increase of $10,000,000. The increase is to fund procurement of laser guided training rounds. Initial fielding of these rounds has been applauded by the Navy strike community, as it has provided aircrews with affordable, operationally-realistic training in precision-guided weapons delivery. In view of these enhancements to readiness, the Committee directs the Navy to provide for annual laser-guided training round procurements in the fiscal year 1995 and subsequent budget submission. The Committee designates this as an item of special interest; no reprogrammings may be made without prior Committee approval.

5 INCH/54 GUN AMMUNITION

The Navy budgeted $55,161,000 for the procurement of 5 inch/54 gun ammunition. The Committee recommends $40,161,000, a reduction of $15,000,000 because of overstated training consumption.

76MM GUN AMMUNITION

The Navy budgeted $15,583,000 for procurement of 76mm gun ammunition. The Committee recommends $9,800,000, a reduction of $5,783,000. The reduction deletes funding for the VTNF ($5,858,000) and the BL&P ($3,007,000) because of overstated training consumption.

DEMILITARIZATION

For reasons discussed in the Procurement of Ammunition, Army section of this report, the Committee recommends that the $6,712,000 budgeted by the Navy for ammunition demilitarization be transferred to the Army account.

SHIPBUILDING AND CONVERSION, NAVY

Appropriations, 1993	$5,978,287,000
New obligational authority, 1994:	
Estimate	4,294,742,000
Recommended	5,397,102,000
Increase	1,102,360,000

This appropriation finances the construction of new ships and the purchase and the conversion of existing ships, including hull, mechanical, and electrical equipment, electronics, guns, torpedo and missile launching systems, and communications systems.

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
SHIPBUILDING & CONVERSION, NAVY						
OTHER WARSHIPS						
CARRIER REPLACEMENT PROGRAM	--	---	--	1,000,000	---	+1,000,000
CVN REFUELING OVERHAULS	--	31,127	--	31,127	---	---
DDG-51	3	2,642,772	3	2,642,772	---	---
TOTAL, OTHER WARSHIPS		2,673,000		3,673,000		+1,000,000
AMPHIBIOUS SHIPS						
LHD-1 AMPHIBIOUS ASSAULT SHIP (MYP)	1	883,848	1	883,848	---	---
TOTAL, AMPHIBIOUS SHIPS		883,848		883,848		---
MINE WARFARE AND PATROL SHIPS						
MINE WARFARE C2 SHIP	1	124,175	1	124,175	---	---
TOTAL, MINE WARFARE AND PATROL SHIPS		124,175		124,175		---
AUXILIARIES, CRAFT, AND PRIOR-YEAR PROGR						
AUXILIARIES, CRAFT AND PRIOR YEAR PROGRAM COS						
OCEANOGRAPHIC SHIPS	2	110,000	2	110,000	---	---
SERVICE CRAFT	--	27,362	--	32,362	---	+5,000
OUTFITTING	--	251,330	--	221,785	---	-29,545
POST DELIVERY	--	100,732	--	100,732	---	---
PRODUCTION DESIGN SUPPORT	--	38,400	--	38,400	---	---
FIRST DESTINATION TRANSPORTATION	--	5,703	--	5,703	---	---
CONTRACT ADMIN/AUDIT	--	95	--	---	---	-95
COST GROWTH	--	---	--	127,000	---	+127,000
TOTAL, AUXILIARIES, CRAFT, AND PRIOR-YEAR PROGR		582,820		705,180		+102,380
TOTAL, SHIPBUILDING & CONVERSION, NAVY		4,294,742		5,397,102		+1,102,380

COMMITTEE RECOMMENDATIONS

NUCLEAR SUBMARINE MAIN STEAM CONDENSERS

The Committee is very concerned about the viability of the nuclear submarine main steam condenser industrial base. The Navy has identified the single entity currently able to produce this key component as a critical element of the industrial base. Without deliberate action, this capability will cease to exist early next year. In development and implementation of their plan to maintain an appropriate steam condenser industrial base, the Committee therefore directs the Secretary of the Navy to preserve and retain this critical element as a viable, going concern.

OTHER WARSHIPS

AIRCRAFT CARRIER REPLACEMENT PROGRAM

The Committee believes that the Department of Defense Bottom Up Review makes a compelling argument for a force structure of at least twelve aircraft carriers. In order to maintain this force structure the Department of Defense and the Congress must think about and make long term decisions which consider the needs of the Navy well into the future. The Committee believes that in order to satisfy force structure in the long term, funding needs to be provided in fiscal year 1994 to ensure timely completion of the next aircraft carrier, CVN–76. It is anticipated that the Navy and the prime contractor will be free to do preparatory work and negotiate with suppliers respecting subcontracted items prior to funds being made available for obligation, but that no absolute commitments contravening the express language of this appropriation may be entered into.

Accordingly, the Committee recommends $1,000,000,000 in fiscal year 1994 for advance procurement leading to full funding in fiscal year 1995 for construction of the aircraft carrier CVN-76. The funding provided for this program is not available for obligation or expenditure until September 30, 1994 but the Committee believes that this action will save time when the full funding is provided in fiscal year 1995 and thus result in significant contract savings.

DDG-51 DESTROYERS

The Committee recommends $2,642,772,000 for procurement of three DDG-51 class destroyers as requested in the President's budget. The Committee further recommends a general provision which prohibits the Department of the Navy from using any funds for a sole source procurement of ring laser gyroscope configured inertial navigation systems.

MINE WARFARE AND PATROL SHIPS

MHC-51 CLASS COASTAL MINE HUNTERS

In the House Appropriations Committee report on the fiscal year 1993 Department of Defense Appropriations Bill, the Committee addressed its concern about the cost growth on MHC-51 class ships and the financial losses being incurred by the contractor.

The Committee understands that little progress has been made in the past year to resolve the contractual disputes between the Navy and the contractor, and that the cost of legal representation being incurred is rising daily. The Committee further understands that the disputes between the Navy and the contractor may be satisfactorily resolved through "Alternative means of dispute resolution" as delineated in chapter 5, subchapter IV of Title 5 of the United States Code.

Therefore, the Secretary of the Navy is directed to provide the Committee, within 30 days of the date of this report, a report on the possibility of using arbitration as an alternative means of dispute resolution in this case and the schedule under which such arbitration would be established and final resolution of claims achieved.

MHC-51 PROGRAM TECHNOLOGY TRANSFER

As we begin the process of converting our defense industries to commercial use, it becomes even more important that specific defense related technologies gained during the buildup in the eighties are preserved within the industrial base for future use. The Committee specifically recognizes the importance of advanced composite technology and its present and future uses within the shipbuilding industry. The Committee fully supported the transfer of Glass Reinforced Plastic (GRP) technology that was required to manufacture the MHC-51 class ship in the United States, and feels that the shipbuilding industry would lose the knowledge it has gained from the transfer of this advanced technology if it is not maintained and supported in the outyears. The Committee also recognizes that the long term support of the MHC-51 class ship by Navy maintenance activities is dependent upon our ability to sucessfully maintain and support them. Therefore, the Committee directs the Secretary of

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the Navy to ensure the lead shipbuilder is included in the certification of Navy maintenance activities and maintains the capability to assist them with technical advice and support.

AUXILIARIES, CRAFT, AND PRIOR YEAR PROGRAMS

OCEANOGRAPHIC RESEARCH VESSELS

The Committee has provided $110,049,000 for oceanographic research vessels, including $62,500,000 for the fourth ship of the T–AGS 60 ocean survey class. The Committee has provided the Secretary of the Navy with authority to contract for the procurement of this fiscal year 1994 ship, T–AGS 63, and the last ship of the class, T–AGS 64, as options to the current contract for construction of the lead ship of the T–AGS 60 class.

SERVICE CRAFT

The Committee notes with concern that the budget request of $27,362,000 is insufficient to meet the Navy's service craft requirements. Accordingly, the Committee recommends an appropriation of $32,362,000, an increase of $5,000,000 to the budget request. The additional funding is for six open lighters (YC) and two fuel oil storage barges (YOS). Since production is currently ongoing for this type of craft, procuring these vessels in fiscal year 1994 will ensure continuity in the production line and result in cost svaings for the Navy.

OUTFITTING

The budget request includes $251,330,000 for procurement of outfitting material necessary to support ship delivery dates. The fiscal year 1994 request includes a number of programs where the cost has increased significantly or delivery schedules have changed which call into question the need for funding. Accordingly, the Committee recommends a reduction of $29,545,000 to reflect these cost and schedule changes.

PRIOR YEAR PROGRAMS

The Committee recommends an appropriation of $127,000,000 for cost growth on prior year programs only for cost growth in the prior year LSD–41 cargo variant programs, the fiscal years 1989 and 1990 MHC coastal mine hunter programs, the fiscal year 1987 T–AO fleet oiler program, the AO Jumbo conversion program, and 170 foot Patrol Coastal programs.

CONTRACT ADMINISTRATION/AUDIT

For reasons explained at the beginning of the Procurement section of the report, the Committee recommends denial of the increase for contract administration and audit.

OTHER PROCUREMENT, NAVY

Appropriations, 1993	$5,615,325,000
New obligational authority, 1994:	
Estimate	2,967,974,000
Recommended	2,980,815,000
Increase	12,841,000

This appropriation finances the procurement of major equipment and weapons other than ships, aircraft, missiles, torpedoes, and guns. Such equipments range from the latest electronic sensors for updating our naval forces to trucks, training equipment, and spare parts.

Program Recommended

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
OTHER PROCUREMENT, NAVY						
SHIPS SUPPORT EQUIPMENT						
SHIP PROPULSION EQUIPMENT						
LM-2500 GAS TURBINE	--	6,976	--	6,976	--	---
ALLISON 501K GAS TURBINE	--	2,082	--	2,082	--	---
STEAM PROPULSION IMPROVEMENT	--	322	--	322	--	---
OTHER PROPULSION EQUIPMENT	--	4,581	--	4,581	--	---
GENERATORS						
OTHER GENERATORS	--	17,180	--	12,780	--	-4,400
PUMPS						
OTHER PUMPS	--	5,088	--	188	--	-4,900
SUBMARINE PUMP RETROFIT KITS	--	---	--	1,000	--	+1,000
AIR COMPRESSORS						
HIGH PRESSURE AIR COMPRESSORS	--	4,856	--	4,856	--	---
PROPELLERS						
OTHER PROPELLERS AND SHAFTS	--	1,851	--	1,851	--	---
NAVIGATION EQUIPMENT						
ELEC SUSPENDED GYRO NAVIGATOR	--	2,143	--	2,143	--	---
OTHER NAVIGATION EQUIPMENT	--	10,766	--	10,766	--	---
UNDERWAY REPLENISHMENT EQUIPMENT						
UNDERWAY REPLENISHMENT EQUIPMENT	--	12,989	--	12,989	--	---
PERISCOPES						
SUBMARINE PERISCOPES & IMAGING EQUIPMENT	--	15,115	--	15,115	--	---
OTHER SHIPBOARD EQUIPMENT						
FIREFIGHTING EQUIPMENT	--	14,683	--	14,683	--	---
COMMAND AND CONTROL SWITCHBOARD	--	3,518	--	3,518	--	---
POLLUTION CONTROL EQUIPMENT	--	18,383	--	18,383	--	---
SUBMARINE SILENCING EQUIPMENT	--	4,638	--	4,638	--	---
SUBMARINE BATTERIES	--	9,019	--	8,019	--	-1,000
STRATEGIC PLATFORM SUPPORT EQUIP	--	15,179	--	15,179	--	---
DSSP EQUIPMENT	--	3,320	--	3,320	--	---
MINESWEEPING EQUIPMENT	--	13,385	--	13,385	--	---
HM&E ITEMS UNDER $2 MILLION	--	30,970	--	30,970	--	---
SURFACE IMA	--	6,910	--	6,910	--	---
DEGAUSSING EQUIPMENT	--	906	--	906	--	---
RADIOLOGICAL CONTROLS	--	480	--	480	--	---
MINI/MICROMINI ELECTRONIC REPAIR	--	1,275	--	1,275	--	---
SUBMARINE LIFE SUPPORT SYSTEM	--	965	--	965	--	---
REACTOR PLANT EQUIPMENT						
REACTOR COMPONENTS	--	186,426	--	175,426	--	-11,000
OCEAN ENGINEERING						
DIVING AND SALVAGE EQUIPMENT	--	7,720	--	7,720	--	---
NAVAL SPECIAL WARFARE EQUIPMENT	--	5,612	--	5,612	--	---
SMALL BOATS						
STANDARD BOATS	--	9,360	--	14,360	--	+5,000
TRAINING EQUIPMENT						
OTHER SHIPS TRAINING EQUIPMENT	--	545	--	545	--	---
PRODUCTION FACILITIES EQUIPMENT						
PRODUCTION SUPPORT FACILITIES	--	4,652	--	4,652	--	---
OPERATING FORCES IPE	--	8,606	--	8,606	--	---
OTHER SHIP SUPPORT						
NUCLEAR ALTERATIONS	--	108,580	--	108,580	--	---
TOTAL, SHIPS SUPPORT EQUIPMENT		539,170		523,870		-15,300
COMMUNICATIONS AND ELECTRONICS EQUIPMENT						
SHIP RADARS						
AN/SPS-48	--	9,018	--	23,018	--	+14,000
AN/SPS-49	--	16,896	--	16,896	--	---
MK-23 TARGET ACQUISITION SYSTEM	--	19,227	--	19,227	--	---
RADAR SUPPORT	--	7,816	--	7,816	--	---
SURFACE ELECTRO-OPTICAL SYSTEM	--	3,663	--	3,663	--	---
SHIP SONARS						
SURFACE SONAR SUPPORT EQUIPMENT	--	5,102	--	5,102	--	---
AN/SQQ-89 SURF ASW COMBAT SYSTEM	--	80,110	--	80,110	--	---
SSN ACOUSTICS	--	27,200	--	25,700	--	-1,500
SURFACE SONAR WINDOWS AND DOME	--	10,575	--	10,575	--	---
SONAR SUPPORT EQUIPMENT	--	11,463	--	11,463	--	---
SONAR SWITCHES AND TRANSDUCERS	--	17,294	--	16,294	--	-1,000
FBM SYSTEM SONARS	--	1,307	--	1,307	--	---
ASW ELECTRONIC EQUIPMENT						
SUBMARINE ACOUSTIC WARFARE SYSTEM	--	16,245	--	16,245	--	---
SSTD	--	14,907	--	14,807	--	---
ACOUSTIC COMMUNICATIONS	--	160	--	160	--	---
SOSUS	--	41,964	--	41,964	--	---
TOWED ARRAY SONARS	--	---	--	10,000	--	+10,000
SURTASS	--	9,591	--	9,591	--	---
ASW OPERATIONS CENTER	--	6,638	--	6,638	--	---
CARRIER ASW MODULE	--	6,561	--	6,561	--	---
ELECTRONIC WARFARE EQUIPMENT						
AN/SLQ-32	--	1,328	--	1,328	--	---
AN/WLR-1	--	3,884	--	3,884	--	---
ICAD SYSTEMS	--	918	--	918	--	---
EW SUPPORT EQUIPMENT	--	2,884	--	2,884	--	---
C-3 COUNTERMEASURES	--	18,172	--	50,672	--	+32,500
RECONNAISSANCE EQUIPMENT						
COMBAT DF	--	7,000	--	7,000	--	---

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
OUTBOARD	--	11,266	--	9,266	--	-2,000
SUBMARINE SURVEILLANCE EQUIPMENT						
AN/WLD-4	--	4,567	--	4,567	--	---
SUBMARINE SUPPORT EQUIPMENT PROG	--	9,786	--	7,486	--	-2,300
OTHER SHIP ELECTRONIC EQUIPMENT						
NAVY TACTICAL DATA SYSTEM	--	42,863	--	24,000	--	-18,863
TACTICAL FLAG COMMAND CENTER	--	33,787	--	42,787	--	+9,000
LINK 16 HARDWARE	--	24,021	--	24,021	--	---
MINESWEEPING SYSTEM REPLACEMENT	--	51,726	--	50,000	--	-1,726
EMSP (MYP)	--	45,668	--	45,668	--	---
NAVSTAR GPS RECEIVERS	--	6,213	--	6,213	--	---
ARMED FORCES RADIO AND TV	--	6,028	--	6,028	--	---
STRATEGIC PLATFORM SUPPORT EQUIP	--	45,002	--	45,002	--	---
TRAINING EQUIPMENT						
OTHER SPAWAR TRAINING EQUIPMENT	--	5,233	--	5,233	--	---
OTHER TRAINING EQUIPMENT	--	13,881	--	13,881	--	---
AVIATION ELECTRONIC EQUIPMENT						
MATCALS	--	4,010	--	4,010	--	---
SHIPBOARD AIR TRAFFIC CONTROL	--	4,545	--	4,545	--	---
AUTOMATIC CARRIER LANDING SYSTEM	--	10,810	--	10,810	--	---
AIR STATION SUPPORT EQUIPMENT	--	7,852	--	7,852	--	---
MICROWAVE LANDING SYSTEM	--	5,002	--	5,002	--	---
FACSFAC	--	7,999	--	7,999	--	---
ID SYSTEMS	--	6,088	--	6,088	--	---
OTHER SHORE ELECTRONIC EQUIPMENT						
TADIX-B	--	5,331	--	5,331	--	---
NAVAL SPACE SURVEILLANCE SYSTEM	--	2,462	--	2,462	--	---
SPACE SYSTEM PROCESSING	--	8,225	--	---	--	-8,225
NCCS ASHORE	--	16,606	--	16,606	--	---
RADIAC	--	6,923	--	6,923	--	---
GPETE	--	18,780	--	18,780	--	---
INTEG COMBAT SYSTEM TEST FACILITY	--	5,523	--	5,523	--	---
CALIBRATION STANDARDS	--	5,584	--	5,584	--	---
EMI CONTROL INSTRUMENTATION	--	10,342	--	10,342	--	---
SHORE ELEC ITEMS UNDER $2 MILLION	--	4,761	--	4,761	--	---
SHIPBOARD COMMUNICATIONS						
SHIPBOARD TACTICAL COMMUNICATIONS	--	6,145	--	6,145	--	---
PORTABLE RADIOS	--	20,864	--	20,864	--	---
SINCGARS	--	7,266	--	7,266	--	---
SHIP COMMUNICATIONS AUTOMATION	--	27,804	--	27,804	--	---
SHIP COMM ITEMS UNDER $2 MILLION	--	3,300	--	3,300	--	---
SUBMARINE COMMUNICATIONS						
SHORE LF/VLF COMMUNICATIONS	--	3,647	--	3,647	--	---
SUBMARINE COMMUNICATION EQUIPMENT	--	6,206	--	6,206	--	---
SATELLITE COMMUNICATIONS						
SATCOM SHIP TERMINALS	--	86,420	--	86,420	--	---
SATCOM SHORE TERMINALS	--	25,826	--	25,826	--	---
SHORE COMMUNICATIONS						
JCS COMMUNICATIONS EQUIPMENT	--	1,315	--	1,315	--	---
ELECTRICAL POWER SYSTEMS	--	1,380	--	1,380	--	---
WWMCCS COMMUNICATIONS EQUIPMENT	--	2,296	--	2,296	--	---
NAVAL SHORE COMMUNICATIONS	--	19,207	--	19,207	--	---
CRYPTOGRAPHIC EQUIPMENT						
SECURE VOICE SYSTEM	--	36,923	--	36,923	--	---
SECURE DATA SYSTEM	--	5,676	--	5,676	--	---
KEY MANAGEMENT SYSTEMS	--	13,113	--	13,113	--	---
SIGNAL SECURITY	--	162	--	162	--	---
CRYPTOGRAPHIC ITEMS UNDER $2 MILL	--	2,804	--	2,804	--	---
CRYPTOLOGIC EQUIPMENT						
CRYPTOLOGIC COMMUNICATIONS EQUIP	--	1,837	--	1,837	--	---
CRYPTOLOGIC ITEMS UNDER $2 MILLION	--	2,783	--	2,783	--	---
CRYPTOLOGIC FIELD TRAINING EQUIP	--	507	--	507	--	---
OTHER ELECTRONIC SUPPORT						
ELECT ENGINEERED MAINTENANCE	--	4,136	--	4,136	--	---
TOTAL, COMMUNICATIONS AND ELECTRONICS EQUIPMENT		1,061,320		1,091,204		+29,884
AVIATION SUPPORT EQUIPMENT						
SONOBUOYS						
AN/SSQ-53 (DIFAR)	16,500	14,563	16,500	14,563	--	---
AN/SSQ-77 (VLAD)	--	---	--	34,200	--	+34,200
AN/SSQ-110 (EER)	--	13,848	--	13,848	--	---
AIR LAUNCHED ORDNANCE						
CARTRIDGES & CART ACTUATED DEVELOP	--	16,677	--	16,677	--	---
AIRCRAFT ESCAPE ROCKETS	--	7,923	--	7,923	--	---
AIR EXPENDABLE COUNTERMEASURES	--	38,360	--	38,760	--	+400
MARINE LOCATION MARKERS	--	3,204	--	704	--	-2,500
DEFENSE NUCLEAR AGENCY MATERIAL	--	477	--	477	--	---
JATOS	--	6,699	--	6,699	--	---
AIRCRAFT SUPPORT EQUIPMENT						
WEAPONS RANGE SUPPORT EQUIPMENT	--	46,206	--	46,206	--	---

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
EXPEDITIONARY AIRFIELDS	--	2,345	--	2,345	--	---
AIRCRAFT REARMING EQUIPMENT	--	6,323	--	6,323	--	---
CATAPULTS & ARRESTING GEAR	--	2,676	--	2,676	--	---
METEOROLOGICAL EQUIPMENT	--	14,718	--	14,718	--	---
OTHER PHOTOGRAPHIC EQUIPMENT	--	1,006	--	1,006	--	---
AVIATION LIFE SUPPORT	--	5,660	--	5,660	--	---
AIRBORNE MINE COUNTERMEASURES	--	7,105	--	7,105	--	---
LAMPS MK III SHIPBOARD EQUIPMENT	--	4,606	--	4,606	--	---
REWSON PHOTOGRAPHIC EQUIPMENT	--	1,664	--	1,664	--	---
JSIPS-N	--	3,507	--	3,507	--	---
STOCK SURVEILLANCE EQUIPMENT	--	1,290	--	1,290	--	---
OTHER AVIATION SUPPORT EQUIPMENT	--	9,656	--	9,656	--	---
TOTAL, AVIATION SUPPORT EQUIPMENT		207,715		238,815		+32,100
ORDNANCE SUPPORT EQUIPMENT						
SHIP GUN SYSTEM EQUIPMENT						
GUN FIRE CONTROL EQUIPMENT	--	8,307	--	8,307	--	---
SHIP MISSILE SYSTEMS EQUIPMENT						
MK-92 FIRE CONTROL SYSTEM	--	698	--	698	--	---
HARPOON SUPPORT EQUIPMENT	--	3,357	--	3,357	--	---
TARTAR SUPPORT EQUIPMENT	--	21,872	--	31,872	--	+10,000
POINT DEFENSE SUPPORT EQUIPMENT	--	78,934	--	78,934	--	---
AIRBORNE ECM/ECCM	--	1,145	--	1,145	--	---
AEGIS SUPPORT EQUIPMENT	--	29,509	--	34,509	--	+5,000
SURFACE TOMAHAWK SUPPORT EQUIPMENT	--	51,736	--	51,736	--	---
SUBMARINE TOMAHAWK SUPPORT EQUIP	--	6,144	--	6,144	--	---
VERTICAL LAUNCH SYSTEMS	--	5,087	--	5,087	--	---
FBM SUPPORT EQUIPMENT						
STRATEGIC PLATFORM SUPPORT EQUIP	--	6,384	--	6,384	--	---
STRATEGIC MISSILE SYSTEMS EQUIP	--	60,970	--	60,970	--	---
ASW SUPPORT EQUIPMENT						
MK-117 FIRE CONTROL SYSTEM	--	14,472	--	14,472	--	---
SUBMARINE ASW SUPPORT EQUIPMENT	--	5,979	--	5,979	--	---
SURFACE ASW SUPPORT EQUIPMENT	--	13,660	--	13,660	--	---
ASW RANGE SUPPORT EQUIPMENT	--	7,631	--	7,631	--	---
OTHER ORDNANCE SUPPORT EQUIPMENT						
EXPLOSIVE ORDNANCE DISPOSAL EQUIP	--	5,193	--	5,193	--	---
CALIBRATION EQUIPMENT	--	1,741	--	1,741	--	---
STOCK SURVEILLANCE EQUIPMENT	--	1,714	--	1,714	--	---
OTHER ORDNANCE TRAINING EQUIPMENT	--	664	--	664	--	---
OTHER EXPENDABLE ORDNANCE						
FLEET MINE SUPPORT EQUIPMENT	--	9,404	--	9,404	--	---
MINE NEUTRALIZATION DEVICES	--	4,026	--	4,026	--	---
DEFENSE NUCLEAR AGENCY MATERIAL	--	798	--	798	--	---
SHIP EXPENDABLE COUNTERMEASURE	--	11,431	--	11,431	--	---
TOTAL, ORDNANCE SUPPORT EQUIPMENT		360,016		375,016		+15,000
CIVIL ENGINEERING SUPPORT EQUIPMENT						
PASSENGER CARRYING VEHICLES	414	5,420	414	5,420	--	---
SPECIAL PURPOSE VEHICLES	--	13,735	--	13,735	--	---
GENERAL PURPOSE TRUCKS	--	12,746	--	12,746	--	---
TRAILERS/TRUCK TRACTORS	--	3,003	--	3,003	--	---
EARTH MOVING EQUIPMENT	--	4,313	--	4,313	--	---
CONSTRUCTION & MAINTENANCE EQUIP	--	6,014	--	6,014	--	---
FIRE FIGHTING EQUIPMENT	--	3,194	--	3,194	--	---
WEIGHT HANDLING EQUIPMENT	--	1,427	--	1,427	--	---
AMPHIBIOUS EQUIPMENT	--	2,639	--	2,639	--	---
COMBAT CONSTRUCTION SUPPORT EQUIP	--	2,039	--	2,039	--	---
MOBILE UTILITIES SUPPORT EQUIPMENT	--	2,133	--	2,133	--	---
COLLATERAL EQUIPMENT	--	1,816	--	1,816	--	---
OCEAN CONSTRUCTION EQUIPMENT	--	923	--	923	--	---
FLEET MOORINGS	--	2,550	--	2,550	--	---
POLLUTION CONTROL EQUIPMENT	--	13,009	--	13,009	--	---
OTHER CIVIL ENG SUPPORT EQUIPMENT	--	1,079	--	1,079	--	---
NATURAL GAS UTILIZATION EQUIPMENT	--	---	--	16,000	--	+16,000
TOTAL, CIVIL ENGINEERING SUPPORT EQUIPMENT		76,040		92,040		+16,000
SUPPLY SUPPORT EQUIPMENT						
FORKLIFT TRUCKS	--	13,972	--	13,972	--	---
OTHER MATERIALS HANDLING EQUIPMENT	--	3,542	--	3,542	--	---
OTHER SUPPLY SUPPORT EQUIPMENT	--	6,441	--	6,441	--	---
FIRST DESTINATION TRANSPORTATION	--	8,710	--	8,710	--	---
SPECIAL PURPOSE SUPPLY SYSTEMS	--	66,403	--	66,403	--	---
TOTAL, SUPPLY SUPPORT EQUIPMENT		99,068		99,068		---
PERSONNEL AND COMMAND SUPPORT EQUIPMENT						
TRAINING DEVICES						
SURFACE COMBAT SYSTEM TRAINERS	--	689	--	689	--	---
TRAINING SUPPORT EQUIPMENT	--	1,678	--	1,678	--	---
TRAINING DEVICE MODIFICATIONS	--	32,960	--	32,960	--	---
COMMAND SUPPORT EQUIPMENT						
COMMAND SUPPORT EQUIPMENT	--	10,865	--	10,865	--	---
EDUCATION SUPPORT EQUIPMENT	--	6,848	--	6,848	--	---
MEDICAL SUPPORT EQUIPMENT	--	6,153	--	6,153	--	---
CONTRACT ADMIN/AUDIT	--	59,843	--	---	--	-59,843
INTELLIGENCE SUPPORT EQUIPMENT	--	44,630	--	44,630	--	---
OPERATING FORCES SUPPORT EQUIPMENT	--	9,495	--	9,495	--	---
NAVAL RESERVE SUPPORT EQUIPMENT	--	828	--	828	--	---
ENVIRONMENTAL SUPPORT EQUIPMENT	--	12,741	--	12,741	--	---
PHYSICAL SECURITY EQUIPMENT	--	12,264	--	12,264	--	---
COMPUTER ACQUISITION PROGRAM						
COMPUTER ACQUISITION PROGRAM	--	38,181	--	58,181	--	+20,000
PRODUCTIVITY PROGRAMS						
TOTAL, PERSONNEL AND COMMAND SUPPORT EQUIPMENT		237,184		197,341		-39,843
OTHER						
REPLENISHMENT SPARES	--	367,461	--	367,461	--	---
RAISE O & M PURCHASE THRESHOLD	--	---	--	-25,000	--	-25,000
TOTAL, OTHER PROCUREMENT, NAVY		2,067,974		2,080,815		+12,841

Committee Recommendations

Authorization Changes

The Committee recommends the following changes in the budget estimate, in accordance with House and/or Senate authorization action:

[In thousands of dollars]

	Budget request	Committee recommended	Change from request
Other procurement, Navy:			
Submarine pump retrofit kits	....	1,000	+1,000
Contract admin/audit	59,843	....	−59,843
Raise O&M purchase threshold	....	−25,000	−25,000

Ships Support Equipment

OTHER GENERATORS

The Navy budgeted $17,180,000 for the Other Generators program. Included in the request was $3,600,000 for five 400HZ static frequency generators for installation on FFG–7's. The Navy does not intend to exercise the option to procure these generators. Also, the inflation factor used to project the price of the ARC Fault Detectors was overstated by $800,000. The Committee recommends $12,780,000, a reduction of $4,400,000 from the budget request.

OTHER PUMPS

The Navy budgeted $5,089,000 for pumps for submarines. The Committee recommends deletion of $4,900,000 requested in this program for pumps for SSBN 616/627/640 classes. The lead time for these pumps is three years and the navy does not intend to retain these classes of submarines in the outyears.

SUBMARINE PUMP RETROFIT KITS

The Navy has demonstrated a significant acoustic reduction of the 688 class submarine propulsion lube oil service pump by at-sea testing of an improved pump retrofit kit. There exists a need to produce this pump in an economical manner. To accomplish this and to improve the operational capability of the fleet, the committee recommends that $1,000,000 be provided for 10 retrofit kits with funding for the remaining class vessels to be provided in subsequent years so as to preserve the industrial base.

SUBMARINE BATTERIES

The Navy budgeted $9,019,000 for submarine batteries. Included in this request is $1,000,000 for the purchase of Guppy 1 Mod C replacement batteries which are used on the 637 class submarines. This class of submarine is to be deactivated over the next few years. A sufficient supply of these batteries is available to meet the requirements scheduled for replacement through fiscal year 1995. The Committee recommends $8,019,000 for the Submarine Batteries program, a reduction of $1,000,000 from the budget request.

REACTOR COMPONENTS

The Navy budgeted $186,425,000 for the Reactor Components program. Because of the rapid projected pace of downsizing of the fleet, the Committee recommends $175,425,000 for the Reactor Component program, a reduction of $11,000,000 from the request.

STANDARD BOATS

The Navy budgeted $9,350,000 for the Standard Boats program. The Committee understands that the Defense Department has a significant number of civilian manned ("T" type) ships that are not equipped with state of the art survival systems. The Committee therefore recommends that additional funding be provided solely for the procurement of United States built totally enclosed survival systems. The Committee recommends $14,350,000 for Standard Boats, an increase of $5,000,000 to the fiscal year 1994 budget request.

COMMUNICATIONS AND ELECTRONICS EQUIPMENT

AN/SPS-48 RADAR

The Navy budgeted $9,018,000 for the AN/SPS-48 radars program. This program is modifying and upgrading AN/SPS-48 radars which are being removed from nuclear cruisers that are being scrapped and installing the radars on other ships. The FY 93 Supplemental Conference Report provided $33.6 Million to refurbish and upgrade AN/SPS 48E radars. $15.6 Million was for refurbishment of decommissioned radars for use on Amphibious Assault Ships and $18 Million upgrade funds was to develop the Pulse Doppler Unit which will give a ground clutter capability. The Committee recommends the addition of $10 Million in FY 94 only for initial procurement of these Pulse Doppler Mod Kits for Amphibious Assault Ships and Aircraft Carriers and $4 Million only for interfacing these upgraded radars to RAM-CIWS Weapons Systems.

SSN ACOUSTICS

The Navy budgeted $27,200,000 for the SSN Acoustics program. Within this request is $1,500,000 for one OA-900A handling system. Because of the declining number of submarines, the remaining requirements for handling systems can be met with funds appropriated in fiscal year 1993. The Committee recommends $25,700,000 for the SSN Acoustics program, a reduction of $1,500,000 from the budget request.

SONAR SWITCHES AND TRANSDUCERS

The Navy budgeted $17,294,000 for Sonar Switches and Transducers. Included in the request are funds for the purchase of replacement items for the SQS-56 sonar used on the SSN 637 class submarine. Since these submarines are to be deactivated, the Committee recommends $16,294,000 for the program, a reduction of $1,000,000 from the budget request.

AN/SQR-18 TOWED ARRAY SONAR

The Committee recommends an increase of $10,000,000 for the procurement of two pre-production AN/SQR-18(V)3 towed array sonars. The system will add a significant detection capability in littoral areas against diesel electric submarines.

C3 COUNTERMEASURE

The Committee recommends a total of $50,672,000 for the C3 Countermeasure program, an increase of $32,500,000. Details on this recommendation appear in the classified annex to this report.

OUTBOARD MODERNIZATION

The Navy budgeted $11,266,000 for the Outboard Modernization program. Included in the request are some classified items which are available for less than the currently estimated prices. The Committee recommends $9,266,000 for the Outboard Modernization program, a reduction of $2,000,000 from the budget request.

SUBMARINE SUPPORT EQUIPMENT

The Navy budgeted $9,785,000 for the Submarine Support program. Included in the request is $2,300,000 for AN/BRO-7 radomes and field change kits. To date, none of the funds appropriated for the subprogram in fiscal years 1992 and 1993 have been placed under contract, The Committee recommends $7,485,000 for the Submarine Support Equipment program, a reduction of $2,300,000 from the budget request.

NAVY TACTICAL DATA SYSTEM (NTDS)

The Navy requested $42,863,000 in fiscal year 1994 for the Navy Tactical Data System (NTDS) which will procure a variety of shipboard display systems. Last year the Congress provided an additional $12,700,000 to the NTDS budget request available only to procure Range NTDS Display Emulation Equipment (RNDES) equipment. The procurement of this low cost display suite would free up militarized equipment now installed in land-based sites for shipboard use and result in substantial cost savings. In fact a recent audit by the Navy has estimated a potential savings of $500,000,000 could be achieved through the procurement of emulators for land-based sites and making military display equipment available for shipboard use. Despite these findings the Navy has been resistant to Congressional direction to procure commercial emulator display systems and instead continues to procure significantly more expensive military specified equipment. The Committee will not tolerate this waste of scarce resources in a declining budgetary environment.

The Committee therefore denies the fiscal year 1994 budget request for the NTDS program. The Committee does recommend $24,000,000 solely for the acquisition of low cost commercial emulator systems. Of the appropriated amounts provided $13,000,000 is made available only to procure engineering changes for RNDES/AEGIS emulator products, $8,000,000 is provided only to procure RNDES Radar Video Simulators, and $3,000,000 is provided only to procure computer aided submode training (CAST)

simulators for the AEGIS training command to modernize AEGIS cruisers and land-based training sites. It is also the Committee's understanding that opportunities exist to use commercial emulators for applications other than for the direct substitution of shore-based equipment for ship-based use. It is the Committee's intent that the Department of the Navy may utilize appropriated funds for commercial emulators for all potential applications not just those involving the "swap out" of shore-based display equipment for ship-board use. Further the Committee directs the Department of the Navy to expedite these procurement actions.

TACTICAL COMMAND FLAG CENTER

The Navy requested $33,787,000 for the Tactical Command Flag Center (TFCC) in fiscal year 1994. The Committee recommends $42,787,000, an increase of $9,000,000 to the budget request. The additional funding is available only to procure shipboard display emulator suites to be installed in TFCC and combat direction center spaces aboard command platforms.

MINESWEEPING SYSTEM REPLACEMENT

The Navy budgeted $51,728,000 for the Minesweeping System Replacement program. Included within this request is $10,900,000 for six forward area degaussing systems. The Committee understands that current plans are to procure five systems rather than six. The Committee recommends $50,000,000 for the Minesweeping System Replacement program, a reduction of $1,728,000 from the budget request.

SPACE SYSTEM PROCESSING

Space System Processing supports the Slow Walker Tactical Ground Stations and tactical imagery support capability. The Navy has annually requested funds to procure transportable ground stations to be used in conjunction with the Naval Space Surveillance Center. The Committee has annually questioned this requirement since it is not clear why fixed NAVSPASUR sites require mobile ground stations and since Navy ships are already outfitted with receive elements. The Committee is, therefore, again deleting the entire fiscal year 1994 request of $8,225,000.

AVIATION SUPPORT EQUIPMENT

SONOBUOY INVENTORIES

The Committee is concerned that, while sonobuoy inventories appear to be adequate, they may, nevertheless, drop to levels well below revised, lower estimates of requirements in the near future. The Committee's concern is that current estimates for planned procurement may account for revised usage rates for training and revised requirements, but they may not take into account the shelf life of current inventories.

What may appear to be large, adequate inventories could well diminish abruptly, not only because of higher than estimated usage rates, but also because classes of sonobuoy suffer expiration of their planned shelf life. The Committee therefore directs the Navy to

submit a report to the Committee on Appropriatons by February 15, 1994 on sonobody inventories for the next five years. It shall take into account estimated procurement and usage rates by type of sonobuoy; provide detailed estimates of available sonobuoy inventories, including break-downs on estimated years of shelf life for each type of sonobuoy; and it shall compare these inventories with revised requirement levels.

AN/SSQ-77 SONOBUOY

The Committee recommends $34,200,000 for procurement of the AN/SSQ-77 (VLAD) sonobuoy. The budget proposed that this item be procured by the Defense Business Operations Fund (DBOF) beginning in fiscal year 1994. As discussed earlier in this report and as clearly stated in last years conference report, the Committee disagrees with and objects to this proposed change and denies its implementation in a general provision.

AIR EXPENDABLE COUNTERMEASURES

The Navy budgeted $39,360,000 for the Air Expendable Countermeasures program. The Committee recommends a reduction of $2,100,000 for the GEN-X decoy program since the lower than anticipated per-unit cost in fiscal year 1993 for this item enabled the Navy to procure a sufficient number of decoys to meet fiscal year 1994 requirements.

The Committee also recommends an increase of $2,500,000 for the LAU-138/A Launcher Rail Chaff Dispenser program. The Committee recommends a total of $39,760,000, a net increase of $400,000 from the budget request.

MARINE LOCATION MARKERS

The Navy budgeted $3,204,000 for the Marine Location Marker program. Included in the request is $2,500,000 for procurement of the MK-58 Marine Location Marker. The Committee notes that the consumption rates in recent years are below those estimated for consumption during fiscal year 1994. Current inventory levels of the MK-48 combined with additional deliveries from previous buys should be sufficient to satisfy requirements. The committee recommends $704,000 for the Marine Location Marker program, a decrease of $2,500,000 from the budget request.

ORDNANCE SUPPORT EQUIPMENT

TARTAR SUPPORT EQUIPMENT

The Navy budgeted $21,872,000 for the TARTAR Support Equipment program. The Committee recommends a total of $31,872,000 for the program. The $10,000,000 increase is for the procurement of Continuous Wave Acquisition and Track (CWAT) radars for the MK-74 missile fire control system.

AEGIS SUPPORT EQUIPMENT

The Navy budgeted $29,589,000 for the AEGIS Support Equipment program. The Committee recommends an increase of $5,000,000 for continued purchases of Navy standard AN/UYH-16

Mass Memory Storage Devices. The total provided for AEGIS Support Equipment is $34,589,000.

CIVIL ENGINEERING SUPPORT EQUIPMENT

NATURAL GAS UTILIZATION EQUIPMENT

The Committee recommends an increase of $16,000,000 for Natural Gas Utilization Equipment. This program is discussed earlier in the report.

PERSONNEL AND COMMAND SUPPORT EQUIPMENT

CONTRACT ADMINISTRATION/AUDIT

The Navy budgeted $59,843,000 in the Other Procurement, Navy account for Contract Administration/Audit. The Committee recommends deletion of these funds as discussed elsewhere in this request.

COMPUTER ACQUISITION PROGRAM

The Navy requested $38,181,000 for the Computer Acquisition Program. The Committee recommends $20,000,000 above the request and directs the Department of Defense and the Navy to use this funding only for automatic data processing investment equipment, peripheral equipment and related software acquisitions, upgrades or replacements for the Naval Computer and Telecommunications Station (NCTS) and Defense Accounting Office (DAO), New Orleans, the Enlisted Personnel Management Center (EPMAC), and the Naval Reserve Personnel Center (NRPC). The Committee directs the Department and the Navy to spend no less than $8,500,000 of this amount only for such acquisitions, upgrades or replacements at NCTS, New Orleans for primary support of the Naval and Marine Corps Reserve and active missions in the Gulf Coast area including finance and accounting, command, control, and communications, operational readiness functions, and for base level computing and communications functions in support of the central management and control of multiple local area networks as outlined in the Naval Computer and Telecommunications Command draft Data Processing Installations in the Gulf Coast Area (055–N–92), except that the Committee directs the Department of the Navy to assign NCTS, New Orleans the development of a future plan, with supporting economic analysis, for reducing the number of local area networks and user costs at data processing installations, centers and functions in the Gulf Coast area. The Committee directs that no less than $8,500,000 and no less than $2,000,000 be used only for such acquisitions, upgrades and replacements at EPMAC and NRPC respectively. Budget driven reductions in personnel assets will lessen Naval and Marine Corps capabilities to quickly respond to multiple military crises. The Committee directs the Navy and DoD to use the automatic data processing funds at EPMAC and NRPC to provide support for the Navy's total force concept and to improve personnel placement processes, readiness systems and mobilization capability requirements of the Navy and Marine Corps, including new initiatives for the management and coordination of active and reserve personnel

central design activity and personnel accounting programs. The equipment at EPMAC shall also be used to provide disaster preparedness backup for the Bureau of Naval Personnel. The Committee directs the Navy to perform Marine Corps Reserve accounting and accounts payable functions and operations at the Defense Accounting Office, New Orleans, the current site for similar operations for the Naval Reserve. The Committee directs that not less than $1,000,000 shall be provided to DAO, New Orleans, for improvements to systems for this additional work and new missions as well as the development of plans and systems for a central or regional full service finance and accounting center for Naval and Marine or all reserve functions, with supporting data processing systems to be operated by NCTS, New Orleans. The Committee also directs that all equipment acquired for NCTS and DAO, New Orleans, EPMAC, and NRPC will remain within control of the Navy and within the location of NCTS and DAO, New Orleans, EPMAC and NRPC. The data processing acquisitions at NCTS and EPMAC will support new and current initiatives that are not to interfere with the DoD Data Center Consolidation as approved by the Defense Base Closure and Realignment Commission. A total of $58,181,000 is provided for the Computer Acquisition Program.

PROCUREMENT, MARINE CORPS

Appropriations, 1993	$824,607,000
New obligational authority, 1994:	
Estimate	483,464,000
Recommended	527,754,000
Increase	44,290,000

This appropriation provides the Marine Corps with funds for procurement, delivery, and modification of missiles, armament, ammunition, communication equipment, tracked and wheeled vehicles, and various support equipment.

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
PROCUREMENT, MARINE CORPS						
AMMUNITION						
5.56 MM, ALL TYPES	---	1,300	---	1,300	---	---
LINEAR CHARGES, ALL TYPES	---	220	---	220	---	---
.50 CALIBER	---	702	---	702	---	---
40 MM, ALL TYPES	---	4,252	---	4,252	---	---
81 MM HE	---	17,417	---	17,417	---	---
120MM TPCSDS-T M866	---	2,000	---	2,000	---	---
120 MM TP-T M831	---	4,371	---	4,371	---	---
FUZE, ET, M762	---	13,082	---	13,082	---	---
FUZE, ET, M767	---	4,201	---	4,201	---	---
CTG 25MM, ALL TYPES	---	702	---	702	---	---
9 MM ALL TYPES	---	2,100	---	2,100	---	---
MINES, ALL TYPES	---	3,000	---	3,000	---	---
ROCKETS, ALL TYPES	---	10,341	---	10,341	---	---
AMMO MODERNIZATION	---	7,000	---	7,000	---	---
AMMO DEMILITARIZATION	---	7,217	---	---	---	-7,217
OTHER SUPPORT						
ITEMS LESS THAN $2 MIL	---	3,572	---	2,572	---	-1,000
TOTAL, AMMUNITION		84,922		76,705		-8,217
WEAPONS AND COMBAT VEHICLES						
TRACKED COMBAT VEHICLES						
AAV7A1 PIP	---	15,130	---	3,130	---	-12,000
LAV PIP	---	6,914	---	12,914	---	+6,000
LIGHT ARMORED VEHICLE	21	66,525	21	66,525	---	---
MODIFICATION KITS (TRKD VEH)	---	983	---	983	---	---
ARTILLERY AND OTHER WEAPONS						
MOD KITS (ARTILLERY)	---	2,004	---	2,004	---	---
WEAPONS						
TOTAL, WEAPONS AND COMBAT VEHICLES		90,942		83,942		-6,000
GUIDED MISSILES AND EQUIPMENT						
GUIDED MISSILES						
HAWK MOD	---	2,100	---	2,100	---	---
PEDESTAL MOUNTED STINGER (PMS) (MYP)	24	19,201	57	49,201	+33	+30,000
OTHER SUPPORT						
MODIFICATION KITS	---	97	---	97	---	---
TOTAL, GUIDED MISSILES AND EQUIPMENT		21,398		51,398		+30,000
COMMUNICATIONS AND ELECTRONICS EQUIPMENT						
MANPACK RADIOS						
GPS	1,483	14,907	1,483	14,907	---	---
VEHICLE MOUNTED RADIOS AND EQUIPMENT						
VEHICLE MTD RADIOS & EQUIP (MYP)	---	97	---	97	---	---
TSC-96 PIP FLEET SATCOM TERMINAL	5	1,722	5	1,722	---	---
TELEPHONE AND TELETYPE EQUIPMENT						
UNIT LEVEL CIRCUIT SWITCH (ULCS)	---	11,000	---	11,000	---	---
TACT COMM CENTER EQUIP	---	2,914	---	2,914	---	---
JOINT TACT INFO DIST SYS (CL I)	---	1,743	---	5,743	---	+4,000
COMMAND AND CONTROL SYSTEMS						
CONTRACT ADMIN/AUDIT	---	9,043	---	---	---	-9,043
REPAIR AND TEST EQUIPMENT						
ELECTRONIC TEST EQUIP (TEL)	---	4,000	---	4,000	---	---
OTHER COMM/ELEC EQUIPMENT						
SINGLE CHAN GND & AIR RADIO	---	46,122	---	56,122	---	+10,000
OTHER SUPPORT (TEL)						
MODIFICATION KITS (TEL)	---	3,000	---	3,000	---	---
ITEMS LESS THAN $2M (TEL)	---	3,079	---	3,079	---	---
COMMAND AND CONTROL SYSTEM (NON-TEL)						
POS LOCATING RPTG SYSTEM (PLRS)	---	3,300	---	3,300	---	---
TACTICAL AIR OPER MODULE (TAOM)	---	2,484	---	2,484	---	---
ADVANCED TACT AIR COMMAND CENTER	1	9,619	1	9,619	---	---
MARINE TACTICAL C2	---	2,707	---	2,707	---	---
MULTI-SERV ADF FIELD ART TACTICAL DATA SYS	214	9,000	214	9,000	---	---
INTELL/COMM EQUIPMENT (NON-TEL)						
INTELLIGENCE SUPPORT EQUIPMENT	---	21,636	---	21,636	---	---
MOD KITS (INTEL)	---	5,173	---	5,173	---	---
ITEMS LESS THAN $2M (INTELL)	---	2,000	---	2,000	---	---
REPAIR AND TEST EQUIPMENT (NON-TEL)						
ELECTRONIC TUBE REPAIR FACILITY	---	882	---	882	---	---
MECH TEST TUBE	---	600	---	600	---	---
OTHER COMM/ELEC EQUIPMENT (NON-TEL)						
NIGHT VISION EQUIPMENT	---	12,000	---	34,000	---	+22,000
ADF EQUIPMENT	---	14,804	---	14,804	---	---
OTHER SUPPORT (NON-TEL)						
TEST CALIB & MAINT SPT	---	801	---	801	---	---
MODIFICATION KITS (NONTEL)	---	2,447	---	2,447	---	---
TOTAL, COMMUNICATIONS AND ELECTRONICS EQUIPMENT		186,486		215,143		+28,657
SUPPORT VEHICLES						
ADMINISTRATIVE VEHICLES						
COMMERCIAL PASSENGER VEHICLES	86	1,732	86	1,732	---	---
COMMERCIAL CARGO VEHICLES	---	8,304	---	8,304	---	---
TACTICAL VEHICLES						
LOGISTICS VEHICLE SYSTEM	81	12,070	81	12,070	---	---
TRAILERS	---	1,200	---	1,200	---	---
OTHER SUPPORT						
MODIFICATION KITS	---	4,160	---	4,158	---	---
TOTAL, SUPPORT VEHICLES		27,564		27,564		---

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
ENGINEER AND OTHER EQUIPMENT						
ENVIRONMENTAL CONTROL EQUIP ASSORT	---	2,033	---	2,033	---	---
TACTICAL FUEL SYSTEM (TFS) EQUIP	---	1,136	---	1,136	---	---
POWER EQUIPMENT ASSORTED	---	2,406	---	2,406	---	---
AUTOMATIC BUILDING MACHINES	---	---	---	2,000	---	+2,000
MATERIALS HANDLING EQUIPMENT						
COMMAND SUPPORT EQUIPMENT	---	1,700	---	1,700	---	---
AMPHIBIOUS RAID EQUIPMENT	---	1,803	---	1,803	---	---
PHYSICAL SECURITY EQUIPMENT	---	703	---	703	---	---
GARRISON MOBILE ENGR EQUIP	---	2,087	---	2,087	---	---
TELEPHONE SYSTEM	---	388	---	388	---	---
WAREHOUSE MODERNIZATION	---	2,342	---	2,342	---	---
MATERIAL HANDLING EQUIP	---	3,100	---	3,100	---	---
FIRST DESTINATION TRANSPORTATION	---	3,222	---	3,222	---	---
GENERAL PROPERTY						
FIELD MEDICAL EQUIPMENT	---	3,404	---	3,404	---	---
TRAINING DEVICES	---	11,010	---	11,010	---	---
CONTAINER FAMILY	---	2,087	---	2,087	---	---
OTHER SUPPORT						
MODIFICATION KITS	---	87	---	87	---	---
CHEMICAL AGENT MONITOR	221	1,206	221	1,206	---	---
TOTAL, ENGINEER AND OTHER EQUIPMENT		40,344		42,044		+2,000
SPARES AND REPAIR PARTS	---	29,100	---	29,100	---	---
TOTAL, PROCUREMENT, MARINE CORPS		493,464		537,764		+44,300

Committee Recommendations

Marine Corps Equipment Enhancement

The Committee recommends the following increases in the Procurement, Marine Corps appropriation to support unfunded high priority Marine Corps equipment items:

[In thousands of dollars]

Item	Budget	Recommend	Change
LAV PIP (thermal viewer)	6,914	12,914	+6,000
Pedistal mounted stinger	24/19,201	57/49,201	+33/+30,000
JTIDS	1,743	5,743	+4,000
SINCGARS radio	46,122	56,122	+10,000
Night vision equipment	12,392	34,892	+22,500
Automatic building machine	....	2,500	+2,500

Ammunition

AMMUNITION DEMILITARIZATION

For reasons discussed in the Procurement of Ammunition, Army section of this report, the Committee recommends that the $7,217,000 budgeted by the Marine Corps for ammunition demilitarization be transferred to the Army appropriation.

ITEMS LESS THAN $2 MILLION

The Marine Corps budgeted $3,572,000 for items less than $2 million. The Committee recommends $2,522,000, a reduction of $1,050,000, which deletes funding for procurement of non-standard handgun ammunition.

Weapons and Combat Vehicles

AAV7A1 PRODUCT IMPROVEMENT PROGRAM

The Marine Corps budgeted $15,139,000 for the AAV7A1 product improvement program. The Committee recommends $2,539,000, a reduction of $12,600,000 in accordance with authorization legislation.

Communications and Electronics Equipment

JOINT TACTICAL INFORMATION DISTRIBUTION SYSTEM (JTIDS)

The Marine Corps has requested a total of $1,743,000 in fiscal year 1994 for the Joint Tactical Information Distribution System. The Committee believes that this is inadequate to support continued fielding of this high priority equipment. Consequently, an increase of $4,000,000 has been included.

SINGLE CHANNEL GROUND AND AIR RADIO SYSTEM

In fiscal year 1994 the Marine Corps has requested a total of $46,122,000 for the Single Channel Ground and Airborne Radio System. This represents a significant decrease from the $59,837,000 appropriated in fiscal year 1993. The Committee has therefore included an increase of $10,000,000 to provide for an approximately level program.

CONTRACT ADMINISTRATION/AUDIT

For reasons discussed at the beginning of the Procurement section of this report, the Committee recommends denial of the $9,843,000 budgeted for contract administration/audit.

AIRCRAFT PROCUREMENT, AIR FORCE

Appropriations, 1993	$10,029,285,000
New obligational authority, 1994:	
Estimate	7,300,965,000
Recommended	6,887,201,000
Decrease	413,764,000

This appropriation provides for procurement of aircraft, and for modification of in-service aircraft to improve safety and enhance operational effectiveness. It also provides for initial spares and other support equipment to include aerospace ground equipment and industrial facilities. In addition, funds are provided for the procurement of flight training simulators to increase combat readiness and to provide for more economical training.

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program in fiscal year 1994:

[illegible]
[illegible]

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
AIRCRAFT PROCUREMENT, AIR FORCE						
COMBAT AIRCRAFT						
STRATEGIC OFFENSIVE						
B-1B (MYP)	--	162,547	--	162,547	--	---
B-2A (MYP)	--	684,330	--	684,330	--	---
TACTICAL FORCES						
F-15 E	--	38,671	--	38,671	--	---
F-16 C/D (MYP)	24	724,700	24	724,700	--	---
F-16 C/D (MYP) (AP-CY)	--	70,000	--	70,000	--	---
OTHER COMBAT AIRCRAFT						
TOTAL, COMBAT AIRCRAFT		1,681,667		1,681,667		---
AIRLIFT AIRCRAFT						
STRATEGIC AIRLIFT						
DOD FINANCIAL SYSTEMS	--	144,282	--	---	--	-144,282
TACTICAL AIRLIFT						
C-17 (MYP)	6	2,072,000	6	1,772,000	--	-300,000
C-17 (MYP) (AP-CY)	--	340,000	--	340,000	--	---
OTHER AIRLIFT						
C-130H	--	53,704	--	73,704	--	+20,000
TOTAL, AIRLIFT AIRCRAFT		2,610,286		2,186,004		-424,282
TRAINER AIRCRAFT						
OPERATIONAL TRAINERS						
ENHANCED FLIGHT SCREENER	33	9,962	33	9,962	--	---
TANKER, TRANSPORT, TRAINER SYSTEM	38	147,386	38	140,786	--	-6,600
TOTAL, TRAINER AIRCRAFT		157,348		150,748		-6,600
OTHER AIRCRAFT						
HELICOPTERS						
MISSION SUPPORT AIRCRAFT						
CIVIL AIR PATROL A/C	27	2,843	27	3,943	--	+1,100
E-8B	1	201,023	1	241,023	--	-40,000
E-8B (AP-CY)	--	173,700	--	173,700	--	---
SOF A/C CSE	--	18,752	--	18,752	--	---
TOTAL, OTHER AIRCRAFT		403,618		387,918		-30,000
MODIFICATION OF INSERVICE AIRCRAFT						
STRATEGIC AIRCRAFT						
B-2A	--	21,000	--	21,000	--	---
B-1B	--	50,000	--	40,000	--	-10,000
B-52	--	47,367	--	47,367	--	---
F-117	--	16,327	--	16,327	--	---
TACTICAL AIRCRAFT						
A-10	--	20,414	--	20,414	--	---
F/RF-4	--	2,043	--	2,043	--	---
F-15	--	202,725	--	188,325	--	-14,400
F-16	--	120,000	--	120,000	--	---
EF-111	--	---	--	15,000	--	+15,000
F-111	--	10,070	--	10,070	--	---
T/AT-37	--	3,447	--	3,447	--	---
AIRLIFT AIRCRAFT						
C-5	--	31,132	--	31,132	--	---
C-9	--	8,488	--	8,488	--	---
C-17A	--	16,472	--	16,472	--	---
C-21	--	303	--	303	--	---
C-STOL	--	91	--	91	--	---
C-137	--	3,488	--	3,488	--	---
C-141	--	20,196	--	20,196	--	---
TRAINER AIRCRAFT						
T-38	--	12,000	--	12,000	--	---
T-41 AIRCRAFT	--	100	--	100	--	---
T-43	--	303	--	300	--	---
OTHER AIRCRAFT						
KC-10A (ATCA)	--	30,081	--	30,081	--	---
C-12	--	270	--	270	--	---
C-18	--	182	--	182	--	---
C-20 MODS	--	82	--	82	--	---
VC-25A MOD	--	884	--	884	--	---
C-130	--	141,000	--	149,000	--	+8,000
C-135	--	46,843	--	203,143	--	+100,000
E-3	--	4,641	--	4,641	--	---
E-4	--	31,488	--	31,488	--	---
H-1	--	98	--	98	--	---
H-60	--	20,862	--	20,862	--	---
OTHER AIRCRAFT	--	83,884	--	83,884	--	---
OTHER MODIFICATIONS						
CLASSIFIED PROJECTS	--	37,847	--	29,347	--	-8,500
TOTAL, MODIFICATION OF INSERVICE AIRCRAFT		1,107,000		1,253,700		+146,000
AIRCRAFT SPARES AND REPAIR PARTS						
AIRCRAFT SPARES + REPAIR PARTS						
SPARES AND REPAIR PARTS	--	886,077	--	886,077	--	---
TOTAL, AIRCRAFT SPARES AND REPAIR PARTS		886,077		886,077		---
AIRCRAFT SUPPORT EQUIPMENT AND FACILITIES						
COMMON AGE	--	193,535	--	190,035	--	-3,500
INDUSTRIAL RESPONSIVENESS	--	25,106	--	25,106	--	---
WAR CONSUMABLES	--	31,586	--	17,586	--	-14,000
OTHER PRODUCTION CHARGES	--	670,242	--	597,970	--	-72,272
COMMON ECM EQUIPMENT	--	24,533	--	24,533	--	---
TOTAL, AIRCRAFT SUPPORT EQUIPMENT AND FACILITIES		946,322		856,550		-89,772
TOTAL, AIRCRAFT PROCUREMENT, AIR FORCE		7,300,086		6,887,301		-413,784

Committee Recommendations

Airlift Aircraft

Strategic Airlift

DOD FINANCIAL SYSTEMS

For reasons explained at the beginning of the Procurement section of the report, the Committee recommends denial of the $144,292,000 budgeted for DOD Financial Systems.

Tactical Airlift

C–17

The Committee recommends $1,772,809,000 for the procurement of six C–17 aircraft, a reduction of $300,000,000 to the fiscal year 1994 budget request. The Committee also recommends $245,500,000 for fiscal year 1994 advanced procurement of eight aircraft to be procured in fiscal year 1995, the amount of the budget request.

Over the course of the fiscal year 1994 budget cycle the Committee has conducted a rigorous review of all aspects of the C–17 program as well as the overall requirement for strategic and tactical airlift in the Department of Defense. Special hearings were held by the Committee which examined the management of the program by both the Department of the Air Force and the manufacturer of the aircraft. Also evaluated were the effectiveness of the Department of Defense's oversight of the program and the financial stability of the prime contractor. Additionally, the Committee examined other aircraft programs which could potentially perform the C–17 mission. It is the Committee's judgment that, barring substantial unforeseen difficulties, future armed forces' air transportation requirements and sunk costs incurred by the Department of Defense to date warrant the continued production of the C–17 aircraft.

With the recent definitization of the Lot IV preduction contract and the incorporation of new actual cost data into the Air Force's cost estimate of the C–17 program, the Committee believes that funding reductions are possible while still enabling the Air Force to procure the six aircraft requested in the fiscal year 1994 budget. Reductions to line items in the fiscal year 1994 request are made in the amounts specified: Airframe, −$88,000,000; Engines, −$9,600,000; Avionics package, −$7,300,000; Other GFE, −$900,000; Peculiar Training Equipment, −$13,500,000. The Committee also recommends a reduction of $68,700,000 for engineering change orders (ECOs). This recommendation still allows for growth over the fiscal year 1993 request for ECOs. Finally the Committee recommends a reduction of $112,000,000 for C–17 support equipment. Subsequent to the submission of the budget request the delivery and deployment schedule for the C–17 was extended by five months. With the delivery of the first operational aircraft to the first main operating base occurring only in July, the Committee believes it is premature to approve funding for support equipment for the second C–17 main operating base where delivery

of the first aircraft will not occur until 1995 under the current schedule.

The Committee does not remain without concern for the future success of the program and awaits the results of the Defense Acquisition Board review of the program later this year. The Committee therefore, directs that all funds appropriated for advanced procurement in the fiscal year 1994 budget request shall not be obligated until the Secretary of Defense has certified to the congressional defense committees that the following criteria have been met:

1. A production representative aircraft which includes the proposed fixes to the wing, flaps, slats, and landing gear has been designated and a report has been provided to the defense committees on the total cost of retrofitting the first ten aircraft with these corrections.

2. That the C–17 engine is fully compliant with its specific fuel consumption specification at no additional cost to the Department of Defense or; the Department has received fair financial consideration from the engine manufacturer for the performance deficiency and a report has been provided on the details of the settlement.

3. That as part of any evaluation of the cost and operational effectiveness of present and planned airlift fleets, commercial alternatives are considered as "off the shelf" with only the minimum modifications necessary to maintain Air Force flight safety and communications standards.

The Committee also directs that on a quarterly basis a report be made on the progress of the C–17 flight test program.

COMMERCIAL AIRLIFT

The Committee understands that as part of the Defense Acquisition Board's (DAB) upcoming review of the C–17 program other alternatives for fulfilling the strategic airlift mission will be considered as a supplement to the C–17. One of these alternatives is the use of commercial widebody aircraft to augment the core airlift capabilities provided by the present fleet of C–5s, C–141s and ultimately the C–17. If warranted by the findings of the DAB, the Committee directs that the Air Force provide a plan to the congressional defense committees which initiates the acquisition of new commercial widebody aircraft as part of the overall solution to the Department's airlift shortage problem.

C–130S

The Committee recommends $73,794,000 for the C–130 program, an addition of $20,000,000 to the fiscal year 1994 budget request. Over the course of the fiscal year 1994 budget cycle the Committee has examined in detail the Department of Defense's overall requirement for strategic and tactical airlift. The Committee has been dismayed to learn that the last time the Department attempted to analytically determine the inventory objective for C–130 airlift aircraft was 1988 in a national security environment that was drastically different than the one faced today. At a time when

major investment decisions need to be made by both the Department and Congress to address acknowledged deficiencies in airlift capacity the Committee finds it disturbing that the Department cannot rationally articulate the requirement for C–130 aircraft in terms of both basic force structure and modernization needs. The Committee therefore directs the Secretary of Defense to prepare and submit a C–130 airlift modernization plan to the House Defense Appropriations Subcommittee which should address at a minimum the following issues:

—The necessary size of both the active and guard/reserve force structure for C–130 airlift aircraft as determined by Department of Defense airlift requirements.
—The operational status of the present active and guard/reserve C–130 fleet to include average age, average airframe life, and overall mission capability by unit.
—The availability of unique C–130 ground support equipment for guard and reserve units.
—A plan for transferring active duty C–130 aircraft to the guard reserves to address their modernization needs in lieu of acquiring new aircraft.

It is the Committee's sense that in the future, transfer of excess active C–130 aircraft to the guard and reserves should be the primary option in addressing the modernization needs of the guard and reserve forces. It is also the Committee's belief that when acquisition of new aircraft is warranted they should be the most capable and cost-effective variant of the C–130. Toward that end the Committee has provided an additional $20,000,000 above the budget request to initiate procurement of the C–130J which will be available in 1995.

This C–130 airlift modernization plan shall be submitted to the Committee no later than March 31, 1994.

TRAINER AIRCRAFT

TANKER, TRANSPORT, TRAINER SYSTEM

T1–A

The Committee recommends $140,756,000 for the T1–A aircraft program a reduction of $6,600,000 from the budget request. The Committee makes this reduction without prejudice. The Committee understands that sufficient prior year unobligated balances exist for the Air Force to acquire T1–A training devices during fiscal year 1994 that were originally requested in the budget.

MISSION SUPPORT AIRCRAFT

CIVIL AIR PATROL

The Committee recommends $3,643,000 for the Civil Air Patrol, an increase of $1,100,000 to the budget request to procure additional equipment in support of increased operating tempos in 1994.

JSTARS

The Committee recommends $241,823,000 for the Joint Surveillance Target Attack Radar System (JSTARS) a reduction of

$40,000,000 to the fiscal year 1994 budget request. In making this recommendation the Committee notes that the request for JSTARS includes $92,300,000 for engineering change orders (ECOs), an increase of 261 percent over the prior year request, or expressed another way 26.8 percent of the entire unit recurring fly-away cost of the JSTARS aircraft. The Committee further notes that this increase has been requested despite the fact that no major design changes have been identified or proposed for the production aircraft. The amount of funding provided by the Committee still provides for growth of 48 percent over the fiscal year 1993 request.

It is the Committee's understanding that at presently planned production rates for the JSTARS aircraft certain critical sub-components such as the moving target indicator radar will never be preduced as part of an efficient manufacturing process but rather in a high cost engineering development environment over the entire life of the program. The Committee believes that substantial cost savings opportunities exist by identifying these components which could be procured at more efficient rates over the production run of the JSTARS aircraft. The Committee therefore directs that the Department of the Air Force identify critical sub-components of the JSTARS aircraft which, under presently planned production rates would be manufactured at prohibitively high unit costs or instances where the stability of the supplier base for a particular sub-component is threatened by the low production rates contemplated. The results of this analysis should be provided to the Committee no later than March 31, 1994. If so warranted by the study the Committee strongly encourages the Air Force to budget for these components on a multi-year basis in the fiscal year 1995 budget request.

Modification of In-Service Aircraft

B–1B

The Committee recommends $40,808,000 for the B1–B modification program, a reduction of $10,000,000 to the fiscal year 1994 budget request. The Committee notes that substantial prior year unobligated balances exist for the modification program and makes this recommendation without prejudice.

F–15

The Committee recommends $268,325,000 for the F–15 modification program, a reduction of $14,400,000 to the budget request. The Committee believes that prior year unobligated balances totaling $238,900,000 will provide sufficient funding to execute the fiscal year 1994 modification program.

EF–111

The Committee recommends $15,000,000 for the System Improvement program's AN/ALR–62(V)I radar warning receivers which will be installed on EF–111 aircraft. These aircraft are currently equipped with the ALR–62(V) radar which has operational deficiencies and is experiencing problems with obsolete parts. At present all 110 F–111s are being equipped with the improved ALR–62(V)I. Procuring these radar warning receivers for the EF–111

fleet in fiscal year 1994 avoids the higher unit cost resulting from restarting the production line after the F-111 modifications have been completed. Significant logistics cost savings will also be provided from having a common radar warning receiver for the entire EF-111 fleet.

C-130

The Committee recommends $149,085,000 for C-130 modifications, an addition of $8,000,000 to the budget request. The Committee recommends the increase specifically for upgrades to the Compass Call Mission Training System (CCMTS) to maintain trainer compatibility with the Block III upgrades scheduled for the Compass Call aircraft.

C-135

The Committee recommends $203,143,000 for C-135 modifications, an addition of $156,500,000 to the budget request. The Committee recommends $160,000,000 for the continued re-engining of the reserve components' KC-135E fleet to the "R" configuration. The Committee also recommends the continued re-engining of the RC-135 with the appropriated funds provided. It is the sense of the Committee that in an extremely limited budget environment the re-engining of the RC-135 aircraft should take precedence over all other re-engining efforts for the C-135 fleet. The Committee also recommends a reduction of $3,500,000 to the budget request due to the fact that the fiscal year 1994 requirement for auxiliary power units has been satisfied with the acquisition of prior year re-engining kits.

CLASSIFIED PROJECTS

Details of the Committee's recommendation are discussed in the classified report.

AIRCRAFT SUPPORT EQUIPMENT AND FACILITIES

COMMON AIRCRAFT GROUND EQUIPMENT

F-15 DOWN-SIZED TESTER

The Committee recommends $190,035,000 for common aircraft ground equipment, a roduction of $3,500,000 to the fiscal year 1994 budget request. The reduction is taken specifically against the F-15 down-sized tester program. It is the Committee's understanding that delays in the program schedule have caused an unreasonable degree of concurrency between software development and the production of tester equipment. The Committee also notes that substantial issues concerning the Air Force's overall acquisition strategy for test equipment still need to be resolved with the Inspector General's Office. In light of this the Committee recommends no funding for the F-15 down-sized tester.

WAR CONSUMABLES

MISSILE RAIL LAUNCHERS

The Committee recommends a reduction of $14,000,000 to the budget request for missile rail launcher units for the F-15 and F-16. According to the General Accounting Office delays in current deliveries of launcher units have resulted in substantial production backlogs. Accordingly the Committee believes it is possible to defer further production until fiscal year 1995.

OTHER PRODUCTION CHARGES

Details of the Committee's recommendation are discussed in the classified report.

F-16 BOMB EJECTOR RACK

The Committee understands that the Air Force is evaluating a solid state modification to the electro-mechanical TER 9A triple ejector bomb rack for the F-16. Reportedly this modification will reduce the pulse time delay between signals thereby improving the ejection efficiency of bombs from the F-16 as well as provide operation and maintenance cost savings. The Air Force is directed to proceed expeditiously with this evaluation and report its findings to the Committee upon completion.

MISSILE PROCUREMENT, AIR FORCE

Appropriations, 1993	$4,369,524,000
New obligational authority, 1994:	
Estimate	4,361,050,000
Recommended	3,845,354,000
Decrease	515,696,000

This appropriation provides for procurement, installation, and checkout of strategic ballistic and other missiles, modification of in-service missiles, and initial spares for missile systems. It also provides for operational space systems, boosters, payloads, drones, associated ground support equipment, non-recurring maintenance of industrial facilities, machine tool modernization, and special programs support.

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
MISSILE PROCUREMENT, AIR FORCE						
BALLISTIC MISSILES						
STRATEGIC						
MISSILE REPLACEMENT EQUIPMENT - BALLISTIC						
MISSILE REPLACEMENT EQ-BALLISTIC	--	27,111	--	27,111	--	---
TOTAL, BALLISTIC MISSILES		27,111		27,111		---
OTHER MISSILES						
STRATEGIC						
[illegible] FINANCIAL SYSTEMS	--	91,536	--	---	--	-91,536
HAVE NAP	--	---	--	10,000	--	+10,000
TRI-SERVICE ATTACK MISSILE	--	196,500	--	---	--	-196,500
ADVANCED CRUISE MISSILE	--	80,367	--	80,367	--	---
TACTICAL						
AMRAAM	740	501,620	740	489,920	--	-11,700
AGM-130 POWERED GBU-15	102	73,001	102	73,001	--	---
TARGET DRONES						
MQM-107 SUBSCALE DRONE	96	36,314	80	36,314	--	---
QF-4 FULL SCALE AERIAL DRONE	--	4,663	--	4,663	--	---
INDUSTRIAL FACILITIES						
[illegible]	--	6,312	--	6,312	--	---
MISSILE REPLACEMENT EQUIPMENT - OTHER						
MISSILE REPLACEMENT EQ-OTHER	--	21,388	--	21,388	--	---
TOTAL, OTHER MISSILES		980,911		881,915		-[illegible]
MODIFICATION OF INSERVICE MISSILES						
CLASS IV						
PEACEKEEPER (M-X)	--	166	--	166	--	---
AIM-9 SIDEWINDER	--	4,716	--	4,716	--	---
MM II/III MODIFICATIONS	--	36,100	--	36,100	--	---
AGM-65D MAVERICK	--	421	--	421	--	---
AGM-88A HARM	--	76,004	--	76,004	--	---
MODIFICATIONS UNDER $2.0M	--	223	--	223	--	---
TOTAL, MODIFICATION OF INSERVICE MISSILES		117,630		117,630		---
MISSILE SPARES + REPAIR PARTS						
SPARES AND REPAIR PARTS	--	84,177	--	84,177	--	---
OTHER SUPPORT						
SPACE PROGRAMS						
SPACEBORNE EQUIP (COMSEC)	--	395	--	395	--	---
GLOBAL POSITIONING (SPACE)	4	116,370	4	116,370	--	---
GLOBAL POSITIONING (SPACE) (AP-CY)	--	[illegible]	--	[illegible]	--	-30,000
SPACE SHUTTLE OPERATIONS	--	74,000	--	74,000	--	---
SPACE BOOSTERS (SPACE)	--	470,[illegible]	--	470,[illegible]	--	---
MEDIUM LAUNCH VEHICLE	2	134,487	2	84,487	--	-50,000
MEDIUM LAUNCH VEHICLE (AP-CY)	--	11,[illegible]	--	11,[illegible]	--	---
DEF METEOROLOGICAL SAT PROG (SPACE)	--	[illegible]	--	[illegible]	--	---
DEFENSE SUPPORT PROGRAM (SPACE)	1	[illegible],724	1	[illegible],724	--	---
DEFENSE SUPPORT PROGRAM (SPACE) (AP-CY)	--	[illegible]	--	[illegible]	--	---
DEFENSE SATELLITE COMM SYSTEM (SPACE)	--	32,440	--	32,440	--	---
SPECIAL PROGRAMS						
MILSTAR (SPACE)	8	31,727	8	21,727	--	-10,000
MILSTAR (SPACE) (AP-CY)	--	10,160	--	10,160	--	---
SPECIAL UPDATE PROGRAMS	--	141,138	--	141,138	--	---
SPECIAL PROGRAMS	--	1,613,[illegible]	--	1,472,[illegible]	--	-141,000
TOTAL, OTHER SUPPORT		3,101,210		2,884,010		-[illegible]
TOTAL, MISSILE PROCUREMENT, AIR FORCE		4,281,[illegible]		3,846,384		-[illegible]

Committee Recommendations

Other Missiles

DOD FINANCIAL SYSTEMS

For reasons explained at the beginning of the Procurement section of the report, the Committee recommends denial of the $91,536,000 budgeted for DOD Financial Systems.

HAVE NAP

The Committee has included an additional $10,000,000 for the procurement of Have Nap missiles. The Committee recommends that the Air Force continue the acquisition of this missile as a near term stand-off capability for the B–52 aircraft. It is the Committee's understanding that current technology development efforts will significantly reduce the unit cost of the missile. The additional funding provided by the Committee will eliminate a costly break in the production line and is compatible with the overall goal of total program cost reduction.

TRI-SERVICE ATTACK MISSILE

Details of the Committee's recommendation concerning the Tri-Service Attack Missile are discussed in the classified annex to this report.

Tactical Missiles

ADVANCED MEDIUM RANGE AIR-TO-AIR MISSILE

The Committee recommends $489,929,000 for the Advanced Medium Range Air-to-Air Missile (AMRAAM), a reduction of $11,700,000 to the budget request. The Committee notes the progress that has been made with regard to on time deliveries and reliability growth and makes this recommendation without prejudice. According to the GAO, the request for captive air training missiles can be reduced by $5,400,000 due to revised requirement estimates. The Committee also recommends reducing the request for special tooling and test equipment by $6,300,000. Reduced production rates and mature manufacturing processes for the missile indicate that an increase in funding for tooling equipment is not justified.

Other Support

Space Programs

GLOBAL POSITIONING SYSTEM (GPS)

One of the great technological achievements in modern warfare is the capability to determine a precise location on or above the earth's surface that is afforded by the Global Positioning System. The Committee fully supports the continuation of this program and notes the critical impact it had in the warfighting capability of U.S. troops in Desert Storm.

GPS, however, is embarked on an effort to upgrade the current system to what is termed the Block IIR configuration. The Commit-

tee is concerned that the proposed program is being delayed by slippages in the ground software and the first launch will not take place in 1996 as is now planned. The Committee is reluctantly deleting $25,000,000 from the GPS advanced procurement request of $55,935,000 to reflect this likely slippage. The Air Force is directed to provide a report on the status of the GPS Block IIR effort, especially including the ground software.

MEDIUM LAUNCH VEHICLE

The Air Force recently awarded a contract for procurement of additional medium launch vehicles primarily to support the launch of Global Positioning System Block IIR satellites beginning in 1996. As noted above, the Committee believes that the actual launch date will slip. Consequently, the requirement for the additional Delta medium launch vehicles will be delayed. The Committee has deleted $50,000,000 from the fiscal year 1994 request of $134,407,000 to reflect the slower pace of the acquisition of these launch vehicles.

NUCLEAR DETONATION (NUDET) DETECTION SYSTEM

The Air Force has requested a total of $41,836,000 for procurement and advanced procurement of the NUDET Detection System which will be put on the GPS system. As described above, the Block IIR launch will likely be delayed. The Committee has, therefore, included a reduction of $10,000,000 in the NUDET procurement to reflect this slippage.

SPECIAL PROGRAMS

The Committee recommendation concerning special programs is discussed in the classified report.

OTHER PROCUREMENT, AIR FORCE

Appropriations, 1993	$7,686,524,000
New obligational authority, 1994:	
Estimate	7,942,065,000
Recommended	7,336,918,000
Decrease	605,147,000

This appropriation provides for the procurement of weapon systems and equipment other than aircraft and missiles. Included are munitions, other weapons, vehicles, electronic and telecommunications systems for command and control of operational forces, and ground support equipment for weapons systems and supporting structure.

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
OTHER PROCUREMENT, AIR FORCE						
MUNITIONS AND ASSOCIATED EQUIPMENT						
ROCKETS + LAUNCHERS						
ITEMS LESS THAN $2,000,000	--	4,170	--	4,170	--	---
CARTRIDGES (THOUSANDS)						
5.56 MM	27,374	7,833	27,374	7,833	--	---
20MM TRAINING	2,000	7,012	2,000	7,012	--	---
30 MM TRAINING	3,301	35,464	3,301	35,464	--	---
CARTRIDGE CHAFF RR-180	[illegible]	3,217	[illegible]	3,217	--	---
CARTRIDGE CHAFF RR-188	1,321	2,326	1,321	2,326	--	---
SIGNAL MK-4 MOD 3	[illegible]	616	[illegible]	616	--	---
CART IMP 2000 FT/LBS	[illegible]	2,019	[illegible]	2,019	--	---
ITEMS LESS THAN $2,000,000	--	4,082	--	4,082	--	---
BOMBS						
MK-82 INERT/BDU-50	24,936	6,310	--	---	-24,936	-6,310
BDU-15	--	6,036	--	6,036	--	---
BOMB PRACTICE 25 POUND	716,704	7,488	716,704	7,488	--	---
SENSOR FUZED WEAPON	110	80,840	110	80,840	--	---
BDU INFLATABLE RETARDER	--	---	5	5,000	+5	+5,000
ITEMS LESS THAN $2,000,000	--	6,834	--	6,834	--	---
TARGETS						
ITEMS LESS THAN $2,000,000	--	84	--	84	--	---
OTHER ITEMS						
FLARE, IR MJU-7B	306,372	6,288	263,286	5,274	-43,086	-1,014
MJU-10B FLARE	75,013	3,211	75,013	3,211	--	---
ALA-17 FLARE	53,302	11,486	53,302	11,486	--	---
M-206 CARTRIDGE FLARE	888,370	13,323	--	---	-888,370	-13,323
AMMO BOWL	--	280	--	---	--	-280
SPARES AND REPAIR PARTS	--	2,000	--	2,000	--	---
MODIFICATIONS	--	2,400	--	2,400	--	---
ITEMS LESS THAN $2,000,000	--	7,000	--	7,000	--	---
FUZES						
FMU-139 FUZE	--	30,036	--	---	--	-30,036
ITEMS LESS THAN $2,000,000	--	302	--	302	--	---
OTHER WEAPONS						
M-16 A2 RIFLE	7,040	4,080	7,040	4,080	--	---
.50 CAL RIFLE	104	1,330	104	1,330	--	---
TOTAL, MUNITIONS AND ASSOCIATED EQUIPMENT		344,724		308,308		-36,416
VEHICULAR EQUIPMENT						
PASSENGER CARRYING VEHICLES						
SEDAN, 4 DR 4X2	180	1,910	180	1,910	--	---
STATION WAGON, 4X2	101	1,310	101	1,310	--	---
BUS, 30 PASSENGER	40	2,347	40	2,347	--	---
BUS - 32-44 PASSENGER	22	1,300	22	1,300	--	---
AMBULANCE, BUS	1	75	1	75	--	---
MODULAR AMBULANCE	100	7,061	100	7,061	--	---
14-23 PASSENGER BUS	6	285	6	285	--	---
LAW ENFORCEMENT VEHICLE	180	2,515	180	2,515	--	---
ARMORED SEDAN	2	330	2	330	--	---
CARGO + UTILITY VEHICLES						
TRUCK, PICKUP, 1/2T, 4X2	704	8,720	704	8,720	--	---
TRUCK, PICKUP, COMPACT	1,430	13,143	1,430	13,143	--	---
TRUCK MULTI-STOP 1 TON 4X2	130	2,618	130	2,618	--	---
TRUCK CARRYALL	104	2,001	104	2,001	--	---
CAP VEHICLES	--	836	--	836	--	---
ITEMS LESS THAN $2,000,000	--	11,758	--	11,530	--	-228
SPECIAL PURPOSE VEHICLES						
TRUCK TANK FUEL R-11	154	17,030	154	17,030	--	---
ITEMS LESS THAN $2,000,000	--	14,743	--	14,743	--	---
FIRE FIGHTING EQUIPMENT						
TRUCK CRASH P-23	2	1,001	2	1,001	--	---
TRUCK WATER P-26 (P-18)	16	2,012	16	2,012	--	---
HEAVY RESCUE VEHICLE	13	2,162	--	---	-13	-2,162
TRUCK PUMPER P-24	16	2,330	16	2,330	--	---
TRUCK PUMPER P-22	35	3,488	35	3,488	--	---
ITEMS LESS THAN $2,000,000	--	777	--	777	--	---
MATERIALS HANDLING EQUIPMENT						
TRUCK, F/L 10,000 LB	140	7,120	140	7,120	--	---
60K A/C LOADER	18	27,[illegible]	8	11,[illegible]	-10	-15,[illegible]
60K CONTAINER HANDLER	10	3,047	10	3,047	--	---
ITEMS LESS THAN $2,000,000	--	2,722	--	2,722	--	---
BASE MAINTENANCE SUPPORT						
WELL DRILLING SYSTEM	4	3,830	4	3,830	--	---
SPARES AND REPAIR PARTS	--	[illegible]	--	[illegible]	--	---
MODIFICATIONS	--	[illegible]	--	[illegible]	--	---
ITEMS LESS THAN $2,000,000	--	7,618	--	7,618	--	---
CANCELLED ACCOUNT ADJUSTM						
TOTAL, VEHICULAR EQUIPMENT		155,312		137,025		-18,287
ELECTRONICS AND TELECOMMUNICATIONS EQUIP						
COMM SECURITY EQUIPMENT(COMSEC)						
COMSEC EQUIPMENT	--	23,813	--	23,813	--	---
SPARES AND REPAIR PARTS	--	1,638	--	1,638	--	---
MODIFICATIONS (COMSEC)	--	983	--	983	--	---
INTELLIGENCE PROGRAMS						
INTELLIGENCE DATA HANDLING SYS	--	11,170	--	11,170	--	---
INTELLIGENCE TRAINING EQUIPMENT	--	31	--	31	--	---
INTELLIGENCE COMM EQUIP	--	10,790	--	10,790	--	---
ITEMS LESS THAN $2,000,000	--	344	--	344	--	---
ELECTRONICS PROGRAMS						
AIR TRAFFIC CTRL/LAND SYS (ATCALS)	--	13,486	--	14,986	--	+1,500
TACTICAL AIR CONTROL SYS IMPROVE	--	55,031	--	50,031	--	-5,000
WEATHER OBSERV/FORCAST	--	47,986	--	48,986	--	+1,000
DEFENSE SUPPORT PROGRAM	--	38,563	--	28,463	--	-10,100
STRATEGIC COMMAND AND CONTROL	--	57,388	--	57,388	--	---
CHEYENNE MOUNTAIN COMPLEX	--	29,388	--	29,388	--	---
NAVSTAR GPS	--	5,384	--	3,984	--	-1,400
DEFENSE METEOROLOGICAL SAT PROG	--	15,585	--	15,585	--	---
TAC SIGINT SUPPORT	--	4,544	--	4,544	--	---
IMAGERY TRANS	--	4,071	--	4,071	--	---

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
SPECIAL COMM-ELECTRONICS PROJECTS						
AUTOMATIC DATA PROCESSING EQUIP	--	84,178	--	84,178	--	---
AFP OPERATIONS CONSOLIDATION	--	67,943	--	67,943	--	---
WWMCCS/WIS ADPE	--	21,964	--	18,584	--	-3,380
MOBILITY COMMAND AND CONTROL	--	42,700	--	36,000	--	-6,700
AIR FORCE PHYSICAL SECURITY SYSTEM	--	32,306	--	30,306	--	-2,000
RANGE IMPROVEMENTS	--	36,083	--	36,083	--	---
C3 COUNTERMEASURES	--	9,936	--	9,936	--	---
BASE LEVEL DATA AUTO PROGRAM	--	32,940	--	32,940	--	---
AIR FORCE SATELLITE CONTROL NETWORK	--	32,506	--	32,506	--	---
CONSTANT WATCH	--	6,270	--	6,270	--	---
EASTERN/WESTERN RANGE I&M	--	117,311	--	117,311	--	---
AIR FORCE COMMUNICATIONS						
TELEPHONE EXCHANGE	--	96,677	--	96,677	--	---
USCENTCOM	--	1,861	--	1,861	--	---
AUTOMATED TELECOMMUNICATIONS PRG	--	10,186	--	10,186	--	---
MILSATCOM	--	86,333	--	86,333	--	---
SATELLITE TERMINALS	--	10,036	--	10,036	--	---
DCA PROGRAMS						
WIDEBAND SYSTEMS UPGRADE	--	3,032	--	3,032	--	---
MINIMUM ESSENTIAL EMER COMM NET	--	1,840	--	1,840	--	---
ORGANIZATION AND BASE						
TACTICAL C-E EQUIPMENT	--	88,079	--	88,079	--	---
TV EQUIPMENT (AFRTV)	--	6,282	--	6,282	--	---
CCTV/AUDIOVISUAL EQUIPMENT	--	3,862	--	3,862	--	---
BASE COMM INFRASTRUCTURE	--	1,084	--	1,084	--	---
SPARES AND REPAIR PARTS	--	26,302	--	26,302	--	---
CAP COM & ELECT	--	184	--	184	--	---
ITEMS LESS THAN $2,000,000	--	12,083	--	12,083	--	---
MODIFICATIONS						
COMM ELECT MODS	--	16,936	--	15,833	--	---
ANTIJAM VOICE	--	9,914	--	9,914	--	---
SPACE MODS	--	25,007	--	25,007	--	---
TOTAL, ELECTRONICS AND TELECOMMUNICATIONS EQUIP		1,147,540		1,121,410		-26,130
OTHER BASE MAINTENANCE AND SUPPORT EQUIP						
TEST EQUIPMENT						
BASE/ALC CALIBRATION PACKAGE	--	9,831	--	9,831	--	---
[illegible] AFB CALIBRATION PACKAGE	--	1,571	--	1,571	--	---
ITEMS LESS THAN $2,000,000	--	11,300	--	11,300	--	---
PERSONAL SAFETY AND RESCUE EQUIP						
NIGHT VISION GOGGLES	--	906	--	906	--	---
BREATHING APPARATUS TWO HOUR	--	5,074	--	5,074	--	---
CHEMICAL/BIOLOGICAL DEF PROG	--	7,117	--	---	--	-7,117
ITEMS LESS THAN $2,000,000	--	4,606	--	4,606	--	---
DEPOT PLANT + MATERIALS HANDLING EQ						
BASE MECHANIZATION EQUIPMENT	--	11,348	--	11,348	--	---
AIR TERMINAL MECHANIZATION EQUIP	--	6,730	--	6,730	--	---
ITEMS LESS THAN $2,000,000	--	4,320	--	4,320	--	---
ELECTRICAL EQUIPMENT						
GENERATORS-MOBILE ELECTRIC	--	7,027	--	7,027	--	---
ITEMS LESS THAN $2,000,000	--	3,546	--	3,546	--	---
BASE SUPPORT EQUIPMENT						
BASE PROCURED EQUIPMENT	--	19,047	--	19,047	--	---
NATURAL GAS UTILIZATION EQUIPMENT	--	---	--	10,000	--	+10,000
MEDICAL/DENTAL EQUIPMENT	--	9,730	--	9,730	--	---
ENVIRONMENT PROJECTS	--	30,219	--	30,219	--	---
AIR BASE OPERABILITY	--	12,947	--	12,947	--	---
PALLET AIR CARGO	7,030	6,566	7,030	6,566	--	---
NET ASSEMBLY, 108"X88"	--	1,040	--	1,040	--	---
PHOTOGRAPHIC EQUIPMENT	--	6,071	--	6,071	--	---
TACTICAL SHELTER	--	2,004	--	2,004	--	---
PRODUCTIVITY ENHANCEMENT	--	13,834	--	13,834	--	---
PRODUCTIVITY INVESTMENTS	--	11,000	--	11,000	--	---
MOBILITY EQUIPMENT	--	4,531	--	4,531	--	---
WARTIME HOST NATION SUPPORT	--	1,282	--	1,282	--	---
SPARES AND REPAIR PARTS	--	100	--	100	--	---
ITEMS LESS THAN $2,000,000	--	17,413	--	17,413	--	---
SPECIAL SUPPORT PROJECTS						
INTELLIGENCE PRODUCTION ACTIVITY	--	91,387	--	91,387	--	---
TECH SURV COUNTERMEASURES EQ	--	2,708	--	2,708	--	---
[illegible] GROUND STATIONS	--	55,684	--	40,502	--	-15,182
SELECTED ACTIVITIES	--	5,741,033	--	5,394,633	--	-346,400
SPECIAL UPDATE PROGRAM	--	186,111	--	186,111	--	---
CONTRACT ADMINISTRATION/AUDIT	--	144,606	--	---	--	-144,606
INDUSTRIAL PREPAREDNESS	--	1,362	--	1,362	--	---
MODIFICATIONS	--	3,027	--	3,027	--	---
FIRST DESTINATION TRANSPORTATION	--	14,278	--	14,278	--	---
TOTAL, OTHER BASE MAINTENANCE AND SUPPORT EQUIP		8,394,463		8,087,100		-407,314
RAISE O & M PURCHASE THRESHOLD	--	---	--	-27,000	--	-27,000
TOTAL, OTHER PROCUREMENT, AIR FORCE		7,942,036		7,330,018		-388,147

Committee Recommendations

Authorization Changes

The Committee recommends the following changes in the budget estimate, in accordance with House and/or Senate authorization action:

[In thousands of dollars]

	Budget request	Committee recommended	Change from request
Other procurement, Air Force:			
Weather observ/forcast	47,650	48,650	+1,000
Sr yr ground stations	55,654	40,552	−15,102
Contract administration/audit	144,596		−144,596
Raise O&M purchase threshold		−27,000	−27,000

Munitions and Associated Equipment

BUDGETING AIR FORCE MUNITIONS

The Committee notes a recommendation in the Senate Armed Services Committee report that the Air Force consolidate all munitions funding in the Missile Procurement, Air Force appropriation beginning in fiscal year 1995. The Committee finds no problem with the current arrangement under which guided missiles are funded in the missile account and all other munitions are funded in the Other Procurement, Air Force appropriation. The Committee intends to continue this practice in future year appropriation acts, regardless of how the Air Force may structure its budget proposal.

MK–82 INERT/ BDU–50

The Air Force budgeted $6,318,000 for procurement of the MK–82/BDU–50. The Committee recommends denial of the entire request based on the inventory exceeding needs and deliveries not occurring within the funded delivery period.

BSU INFLATABLE RETARDERS

The Committee recommends $5,000,000 for the procurement of BSU bomb stabilization unit inflatable retarders which are used for low level bombing.

MJU–7B FLARE

The Air Force budgeted $6,288,000 for the procurement of the MJU–7B infrared flare. The Committee recommends $5,274,000, a reduction of $1,014,000, based on an overstated procurement lead-time.

M–206 FLARE

The Air Force budgeted $13,323,000 for the procurement of the M–206 cartridge flare. The Committee recommends denial of the entire request based on inventory exceeding requirements.

AMMUNITION DEMIL

For reasons discussed in the Procurement of Ammunition, Army section of this report, the Committee recommends that the $200,000 budgeted by the Air Force for ammunition demilitarization be transferred to the Army appropriation.

FMU–139 FUZE

The Air Force budgeted $20,563,000 for procurement of the FMU–139 fuze. The Committee recommends denial of the entire request based on late type classification of a component of this item.

VEHICULAR EQUIPMENT

ITEMS LESS THAN $2M—CARGO VEHICLES

The Air Force budgeted $11,756,000 for cargo and utility vehicle items less than $2M. The Committee recommends $11,531,000, a reduction of $225,000. The reduction specifically denies the procurement of up-armored HMMWV's proposed to be used as security vehicles. This recommendation is further discussed in the Research, Development, Test and Evaluation section of this report.

HEAVY RESCUE VEHICLE

The Air Force budgeted $2,162,000 for initial procurement of the heavy rescue vehicle. The Committee recommends denial of the entire amount. Procurement of this item should not be approved until the Air Force can demonstrate that it is important enough to fund the acquisition of the total Air Force requirement. The cost and affordability issues for this program were the basis for the Committee's denial of funding for this item last year. Those issues have apparently not been resolved.

60K AIRCRAFT LOADER

The Air Force budgeted $27,601,000 for initial procurement of a 60K aircraft loader. The unit cost of this item is $1.1 million, making the total cost to procure the Air Force requirement of 360 vehicles $410 million. In view of the loader's high unit cost, the unavailability of the technical data package, and the usual technical problems with producing developmental items, the Committee believes that it would be more prudent to initiate procurement at a more modest level. Therefore, the Committee recommends $11,701,000 for 9 loaders, a reduction of $15,900,000.

ELECTRONICS AND TELECOMMUNICATIONS EQUIPMENT

AIR TRAFFIC CONTROL/LANDING SYSTEMS

The Air Force budgeted $13,455,000 for the Air Traffic Control/Landing Systems program. The Committee recommends an increase of $1,500,000 for a full Instrument Landing System (ILS) at the Richard B. Russell Airport in Rome, Georgia. In addition to its civilian function, the airport is used as a refueling and training site by military aircraft, including practice air drops by C–130s. Installation of the ILS will provide the military with 24 hour per day allweather capability and enhance the safety of operations at the air-

port. The Committee recommends a total of $14,955,000 for the Air Traffic Control/Landing Systems program.

TACTICAL AIR CONTROL SYSTEM IMPROVEMENT (TACSI)

The Air Force budgeted $55,931,000 for the Tactical Air Control System Improvement. The funds are for the procurement of several components which are in their second or third year of production. However, the Committee notes that an excessive percentage of the request is for ECP's (Engineering Change §Proposals). The Committee recommends $50,931,000 for the TACSI program, a reduction of $5,000,000 from the budget request.

WEATHER OBSERVATION/FORECAST

The Committee has been informed that the U.S. Air Force does not intend to participate in the Automated Surface Observance System (ASOS). The ASOS is the federally sanctioned program for civilian and military observation requirements. The program is carried out by the National Weather Service, the Federal Aviation Administration and the Department of Defense. It is in its third year of successful deployment under a firm-fixed price contract and is on cost and on time. The Committee does not consider the development of an Air Force unique system to be cost-effective or efficient. Accordingly, the Committee directs the Air Force to exercise its option to purchase ASOS systems to meet its fixed based requirements. Additionally, the Committee encourages the Air Force, as executive agent, to ensure that the U.S. Army Weather Observation fixed base requirements are met through the purchase of ASOS.

The Committee acknowledges the Air Force and Army need for a deployable weather observation system. The Committee also understands that this requirement could be satisfied through a modification program using ASOS as a base system, rather than a separate development effort. Accordingly, the Committee directs the Air Force to determine the most cost-effective and efficient approach to meet that requirement and notify the committee prior to submission of the FY95 Budget request. The Committee recommends an increase of $1,000,000 in the Weather Observation/Forecast program for Air Force participation in the Automated Surface Observance System.

DEFENSE SUPPORT PROGRAM

The Air Force budgeted $38,563,000 for ground systems to support the Defense Support Program (DSP) satellite system. The General Accounting Office has reported that due to cancellation of the acquisition of the Mobile Ground System and slippage in the buy of the Fixed Ground System, a reduction of $10,100,000 is possible in the fiscal year 1994 budget.

NAVSTAR GLOBAL POSITIONING SYSTEM

The Air Force budgeted $5,264,000 for Global Positioning System receivers and support costs. In fiscal year 1993 the Air Force procured a larger quantity of these receivers than budgeted because of lower than anticipated per-unit costs. The increased fiscal year

1993 buy satisfies Air Force requirements and thus the Committee recommends $3,864,000 for support costs and deletion of the $1,400,000 requested for the procurement of additional receivers.

WWMCCS/WIS ADPE

The Air Force requested $21,954,000 for the WWMCCS/WIS ADPE program which provides automated data processing equipment for four Air Force command and control programs. Because of slippage of this program in fiscal year 1993 a portion of the funds provided in fiscal year 1993 can be applied to the fiscal year 1994 program. The Committee recommends $18,594,000, a reduction of $3,360,000 from the budget request.

MOBILITY COMMAND AND CONTROL

The Air Force budgeted $42,768,000 for the Mobility Command and Control program. Within that request, $26,000,000 is for the Information Processing System, a significant increase from the level of the current fiscal year. The equipment procured for the Information Processing System Program is readily available commercial-off-the-shelf equipment. In view of the planned reduction of force structure and the ready availability of the item from commercial sources, the Committee recommends that the Information Processing System program be funded at the level of the current year. The Committee recommends $36,000,000 for the Mobility Command and Control program, a reduction of $6,768,000 from the budget request.

SCOPE COMMAND

SCOPE COMMAND is an Air Force program to modernize existing high frequency ground communications systems which provide support to high priority U.S. government organizations. The Committee is concerned that insufficient funds may be included in the fiscal year 1994 request to ensure that these systems are indeed modernized. No later than October 1, 1993, the Air Force is directed to provide an assessment of the progress being made as well as any additional funding that may be required in fiscal year 1994.

AIR FORCE PHYSICAL SECURITY SYSTEM

The Air Force budgeted $32,395,000 for the Air Force Physical Security Program. The program provides security upgrades and improvements for facilities and equipment at various locations. The Committee is very supportive of the program. However in view of the ongoing reduction in force structure and the base closures proceeding internationally and domestically, the Committee recommends $30,395,000 for the program, a reduction of $2,000,000 from the budget request.

OTHER BASE MAINTENANCE AND SUPPORT EQUIPMENT

CHEMICAL/BIOLOGICAL DEFENSE PROGRAM

The Air Force budgeted $7,117,000 for the Chemical/Biological Defense programs. The program is for the procurement of chemical and biological defense equipment to increase survivability and sus-

tain operations in a chemical/biological environment. The Committee notes that because of lower than anticipated per-unit costs of items procured with fiscal year 1993 funds the Air Force was able to procure significantly more items than projected in fiscal year 1993. Because of the combination of increased purchases with prior year funds and the decrease in inventory requirements because of force structure retrenchments, the funds for fiscal year 1994 are not required.

NATURAL GAS UTILIZATION EQUIPMENT

The Committee recommends an increase of $16,000,000 for Natural Gas Utilization Equipment. This program is discussed earlier in the report.

SENIOR YEAR GROUND STATIONS

The Air Force has requested $55,654,000 for Senior Year Ground Stations. The Committee recommends $40,552,000, a reduction of $15,102,000. Details are discussed in the classified report.

SELECTED ACTIVITIES

The Committee has reduced by $346,499,000 the fiscal year 1994 request of $5,741,033,000 for Selected Activities. Additional details are provided in the classified report which accompanies this unclassified report.

CONTRACT ADMINISTRATION/AUDIT

The Air Force budgeted $144,596,000 for Contract Administration/Audit in the Other Procurement, Air Force Account. The Committee recommends deletion of these funds as discussed elsewhere in this report.

PROCUREMENT, DEFENSE-WIDE AGENCIES

Appropriations, 1993	$1,962,058,000
New obligational authority, 1994:	
Estimate	1,730,164,000
Recommended	1,557,344,000
Decrease	172,820,000

This appropriation provides for the procurement of capital equipment for the Defense Communications Agency, the Defense Logistics Agency, the Defense Mapping Agency, and other agencies of the Department of Defense. The 1994 program includes procurement of automatic data processing equipment, mechanized materials handling systems, general and special purpose vehicular equipment, communications equipment, and many other items.

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
PROCUREMENT, DEFENSEWIDE						
MAJOR EQUIPMENT						
MAJOR EQUIPMENT, OSD						
MAJOR EQUIPMENT, OSD/WHS	--	62,420	--	62,420	--	---
REMOTELY PILOTED VEHICLES	--	86,300	--	96,300	--	+10,000
CORPORATE INFORMATION MANAGEMENT	--	20,160	--	20,160	--	---
SUPERCOMPUTERS	--	---	--	122,300	--	+122,300
CONTRACT ADMINISTRATION/AUDIT	--	6,186	--	---	--	-6,186
AIRBORNE RECON	--	---	--	13,443	--	+13,443
MAJOR EQUIPMENT, NSA						
CONTRACT ADMINISTRATION/AUDIT	--	7,413	--	---	--	-7,413
MAJOR EQUIPMENT, DNA						
VEHICLES	25	401	25	401	--	---
OTHER CAPITAL EQUIPMENT	10	3,000	10	3,000	--	---
CONTRACT ADMINISTRATION/AUDIT	--	67	--	---	--	-67
MAJOR EQUIPMENT, DISA						
WWMCCS ADP SYSTEMS	--	8,726	--	8,726	--	---
INFORMATION SERVICES TRANSFER	--	30	--	30	--	---
CONTRACT ADMINISTRATION/AUDIT	--	1,306	--	---	--	-1,306
ITEMS LESS THAN $2 MILLION	--	44,162	--	---	--	-44,162
MAJOR EQUIPMENT, DIA						
CONTRACT ADMINISTRATION/AUDIT	--	700	--	---	--	-700
MAJOR EQUIPMENT, DLA						
DEFENSE SUPPORT ACTIVITIES	--	3,377	--	3,377	--	---
DBOF TRANS	--	---	--	2,036	--	+2,036
MAJOR EQUIPMENT, DMA						
COMMUNICATION EQUIPMENT	--	5,035	--	5,035	--	---
ADP EQUIPMENT	--	2,476	--	2,476	--	---
VECTOR PRODUCT EQUIPMENT	--	2,700	--	2,700	--	---
DEVELOPMENT TEST FACILITY	--	17,000	--	17,000	--	---
MC & G MAINFRAME UPGRADE	--	2,300	--	2,300	--	---
VEHICLES	--	300	--	300	--	---
CONTRACT ADMINISTRATION/AUDIT	--	600	--	---	--	-600
OTHER CAPITAL EQUIPMENT	--	10,700	--	10,700	--	---
DEFENSE HYDROGRAPHIC EQUIPMENT	--	3,726	--	3,726	--	---
MAJOR EQUIPMENT, DIS						
VEHICLES	--	3,194	--	3,194	--	---
OTHER CAPITAL EQUIPMENT	--	1,010	--	1,010	--	---
CONTRACT ADMINISTRATION/AUDIT	--	104	--	---	--	-104
MAJOR EQUIPMENT, USUHS						
MAJOR EQUIPMENT, DCAA						
ITEMS LESS THAN $2 MILLION	--	---	--	4,000	--	+4,000
MAJOR EQUIPMENT, DSPO						
MAJOR EQUIPMENT, DSPO	--	170,300	--	170,300	--	---
MAJOR EQUIPMENT	--	126,233	--	21,493	--	-104,740
CONTRACT ADMINISTRATION/AUDIT	--	3,300	--	---	--	-3,300
MAJOR EQUIPMENT, OJCS						
MAJOR EQUIPMENT, OJCS	--	86,270	--	86,270	--	---
CONTRACT ADMINISTRATION/AUDIT	--	412	--	---	--	-412
ON-SITE INSPECTION AGENCY						
VEHICLES	4	108	4	108	--	---
OTHER CAPITAL EQUIPMENT	--	986	--	986	--	---
CONTRACT ADMINISTRATION/AUDIT	--	100	--	---	--	-100
STRATEGIC DEFENSE INITIATIVE ORGANIZATION						
PATRIOT	--	130,713	--	130,713	--	---
TOTAL, MAJOR EQUIPMENT		826,100		790,170		-35,927
SPECIAL OPERATIONS COMMAND						
AVIATION PROGRAMS						
MC-130H COMBAT TALON II	--	23,020	--	23,020	--	---
AC-130U GUNSHIP ACQUISITION	--	27,400	--	20,400	--	-7,000
C-130 MODIFICATIONS	--	63,919	--	66,019	--	+2,100
MH-53 MODIFICATIONS	--	13,726	--	13,726	--	---
MH-47/MH-60 MODIFICATIONS	--	7,083	--	7,083	--	---
AIRCRAFT SUPPORT	--	30,227	--	30,227	--	---
SHIPBUILDING						
PC CYCLONE CLASS	--	13,300	--	13,300	--	---
SUBMARINE CONVERSION	--	300	--	300	--	---
MK V PATROL BOAT	--	9,044	--	9,044	--	---
AMMUNITION PROGRAMS						
SOF PYRO/DEMO	--	12,806	--	12,806	--	---
SOF PLATFORM GUN AMMUNITION	--	19,032	--	26,932	--	+7,900
SOF INDIV WEAPONS AMMUNITION	--	12,807	--	12,807	--	---
OTHER PROCUREMENT PROGRAMS						
CONTRACT ADMIN & AUDIT ACTIVITIES	--	13,720	--	---	--	-13,720
COMM EQUIPMENT & ELECTRONICS	--	45,075	--	20,075	--	-25,000
SOF INTELLIGENCE SYSTEMS	--	35,626	--	6,350	--	-29,276
SOF SMALL ARMS & WEAPONS	--	2,100	--	2,100	--	---
SPECIAL WARFARE EQUIPMENT	--	17,743	--	6,643	--	-11,100
MISCELLANEOUS EQUIPMENT	--	4,232	--	4,232	--	---
SOF PLANNING AND REHEARSAL SYSTEM (SOFPARS)	--	10,401	--	10,401	--	---
CLASSIFIED PROGRAMS	--	36,684	--	36,684	--	---
PSYOP EQUIPMENT	--	6,200	--	6,200	--	---
TOTAL, SPECIAL OPERATIONS COMMAND		455,674		392,170		-62,400
CLASSIFIED PROGRAMS	--	469,300	--	407,934	--	-61,367
DEFENSE CONVERSION	--	---	--	6,000	--	+6,000
TOTAL, PROCUREMENT, DEFENSEWIDE		1,720,104		1,547,344		-172,820

Committee Recommendations

CONTRACT ADMINISTRATION/AUDIT

For reasons discussed at the beginning of the procurement section of this report, the Committee recommends the following changes in Procurement, Defensewide, concerning the budget proposal for contract administration/audit:

Major Equipment, OSD	−$6,158,000
Major Equipment, NSA	−7,413,000
Major Equipment, DNA	−67,000
Major Equipment, DISA	−1,368,000
Major Equipment, DIA	−760,000
Major Equipment, DLA	+2,800,000
Major Equipment, DMA	−666,000
Major Equipment, DIS	−104,000
Major Equipment, DCAA	+4,300,000
Major Equipment, DSPO	−3,300,000
Major Equipment, OJCS	−412,000
OSIA	−120,000
SOF	−13,720,000

Major Equipment, OSD

REMOTELY PILOTED VEHICLES

The Committee recommends $88,300,000 for the Unmanned Air Vehicle program, an addition of $19,000,000 to the fiscal year 1994 budget request. The Committee is concerned that the Pioneer UAV system readiness level has fallen well below what is considered acceptable. Pioneer is the only short range system currently in the inventory of the operational forces and will remain the only Navy/Marine Corps capability until the end of the century. Accordingly, the Committee has provided additional funding only for the acquisition of spare and repair parts, additional air vehicles and payloads for the Pioneer UAV. Furthermore, the Joint Project Office is directed to report to the Committee what level of funding will be needed in fiscal year 1995 and beyond to ensure that the Pioneer fleet is maintained at an acceptable readiness level until the Joint Short Range system reaches full operational capability.

Supercomputers

HIGH PERFORMANCE COMPUTING MODERNIZATION PLAN

The Department requested $122,800,000 to buy supercomputers for its laboratories in the Research and Development account. The Committee concurs with the Senate Armed Services Committee proposal to transfer this funding to the Procurement, Defense-Wide account.

The Committee has received reports that funds provided to procure operations supercomputers (also known as high performance computers) for Department laboratories and other users have instead been used to procure new and experimental systems which require considerable software development before they can be effectively utilized. The General Accounting Office has confirmed that operational users throughout the Department were forced to accept supercomputers which were not the optimal systems for their needs. The Committee recommends the adoption of bill language to

ensure that modernization funding is used only for the procurement of stable, operationally-demonstrated systems.

AIRBORNE RECONNAISSANCE

The Office of the Secretary of Defense did not request funds for Airborne Reconnaissance. The Committee is transferring $13,443,000 from the Air Force to the Office of the Secretary of Defense. Details are addressed in the C³I section of this report.

MAJOR EQUIPMENT DISA

ITEMS LESS THAN $2M

The Department requested $44,162,000 for DISA assets. The Committee recommends deleting this request due to implementation concerns with Defense Management Review Decision 918.

MAJOR EQUIPMENT, DEFENSE SUPPORT PROJECTS OFFICE

A total of $170,368,000 has been requested for acquisition costs associated with LANDSAT 7, but has been included in the budget as procurement line item 36 entitled "Major Equipment, DSPO". While this program is being managed by the DSPO, it is not clear why the Department has not budgeted for these costs in an open fashion since LANDSAT is not a classified program. The Department is reminded that, unless there is a national security reason to the contrary, all programs should be openly and accurately displayed in the annual budget.

As a separate adjustment, the Committee has included a reduction of $164,740,000 from the total of $186,233,000 that was requested in line item 37, "Major Equipment". Details of the adjustment have been included in the classified report which accompanies this unclassified report.

SPECIAL OPERATIONS FORCES

AC–130U GUNSHIPS

The gunships are scheduled to be fully operational in September 1994. The Committee recommends only $6.5 million of the $13.5 million request for interim contractor support.

C–130 MODIFICATIONS

An additional $2.1 million is recommended for the scheduled Programmed Depot Maintenance of the "Quiet Knight" aircraft.

SOF PLATFORM GUN AMMUNITION

USSOCOM has identified a serious safety of flight problem associated with aging inventories of PGU–9A/B, 40mm ammunition used in the AC–130 Spectre Gunships. There has been an increasing frequency of premature detonations when firing this ammunition from the gunships. Aircraft have been damaged as a result of detonations in close proximity of the gun. The LI–465 fuze is available from commercial sources to replace the deteriorating MK27 fuzes on the PGU–9A/B. The Committee recommends an additional

$7.5 million to purchase and refit sufficient quantities of the LI–465 fuze to the PGU–9A/B round.

COMMUNICATIONS EQUIPMENT AND ELECTRONICS

The Miniature Multiband Beacon (AN/PPN–29) requested for $4.186 million cannot be obligated before fiscal year 1995. The Command should request these funds in the fiscal year 1995 budget request.

The Committee continues to be concerned about the significant shortfall of required communications and electronics equipment in Special Operations Forces units. Even though the Committee has provided the necessary funding, the command continues to have great difficulty obligating the funds. Because prior year funds are available to continue the procurement of equipment, the Committee recommends the reduction of $20 million from the budget request. The Committee will reconsider this action at conference if the Command can show an improved and executable program. Additionally, the Committee directs the CINCSOC to continue the validation and certification process he has initiated to determine SOF's communications and electronics equipment requirements, to include the Joint Advanced Special Operations Radio System (JASORS). The Committee understands that some aspects of the JASORS may not be applicable to the needs of SOF units. The Committee urges the CINCSOC to complete the validation and certification process by March 1, 1994 and to provide the Committees on Appropriations the results and CINCSOC's recommendations by March 31, 1994.

SOF INTELLIGENCE SYSTEMS

Although the Committee supports the Intelligence Vehicle system which integrates the Mission Advanced Tactical Terminal (MATT) the Imagery Receiver and Intelligence System (IRIS) on a vehicle, production and subsequent buys will take place no earlier than December 1994. Therefore, the Committee denies $20.276 million of the budget request. SOCOM can request additional funds in the fiscal year 1995 budget request to continue this program.

SPECIAL WARFARE EQUIPMENT

The request includes $11.1 million for 76 Rigid Inflatable Boats (RIBs). A low rate initial production contract for 18 RIBs was awarded in December 1992 and delivery is scheduled for October 1993 with developmental test and evaluation scheduled for November and December 1993. Award of a full rate of production contract for 26 of the 76 RIBs is scheduled for September 1994, assuming a favorable production decision (Milestone III in March 1994). The Committee understands that this schedule has already slipped. Therefore, the Committee recommends denying the budget request and directs SOCOM to include this request in the fiscal year 1995 budget submission.

NATIONAL GUARD AND RESERVE EQUIPMENT

Appropriations, 1993	$1,567,200,000
New obligational authority, 1994:	
Estimate	....

Recommended	1,178,100,000
Increase	1,178,100,000

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program in fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
NATIONAL GUARD & RESERVE EQUIPMENT						
RESERVE EQUIPMENT						
ARMY RESERVE						
EXTERNAL FUEL TANKS	--	---	--	3,500	--	+3,500
PLS/HEMTT	--	---	--	47,000	--	+47,000
HET TRUCKS	--	---	--	6,000	--	+6,000
AUTOMATIC BUILDING MACHINES	--	---	--	5,000	--	+5,000
TUG BOATS	--	---	--	25,000	--	+25,000
D-9 BULLDOZER	--	---	--	15,000	--	+15,000
NAVY RESERVE						
P-3 UPGRADES	--	---	--	30,000	--	+30,000
MIUW VANS	--	---	--	21,000	--	+21,000
C-130T AIRCRAFT	--	---	4	124,000	+4	+124,000
F/A-18 SUPPORT	--	---	--	1,500	--	+1,500
ALR-67(V)2	--	---	--	15,000	--	+15,000
C-9 MODS	--	---	--	25,000	--	+25,000
AN/SQQ-T1 TRAINER	--	---	--	11,000	--	+11,000
MARINE CORPS RESERVE						
KC-130T AIRCRAFT	--	---	2	70,000	+2	+70,000
AH-1W COBRA AIRCRAFT	--	---	6	78,000	+6	+78,000
FIREARMS TRAINING SYSTEM	--	---	--	5,000	--	+5,000
MISCELLANEOUS EQUIPMENT	--	---	--	11,500	--	+11,500
AIR FORCE RESERVE						
C-130 AIRCRAFT	--	---	6	189,000	+6	+189,000
C-130 SIMULATOR	--	---	--	23,000	--	+23,000
FIREARMS TRAINING SYSTEM	--	---	--	5,000	--	+5,000
TOTAL, RESERVE EQUIPMENT		---		710,500		+710,500
NATIONAL GUARD EQUIPMENT						
ARMY NATIONAL GUARD						
HET TRUCKS	--	---	--	30,000	--	+30,000
MEDIUM TACTICAL TRUCKS SLEP (2.5 TON ESP)	--	---	--	50,000	--	+50,000
M-9 ACE	--	---	--	50,000	--	+50,000
EXTERNAL FUEL TANKS	--	---	--	4,000	--	+4,000
NIGHT VISION DEVICES	--	---	--	35,000	--	+35,000
FIREARMS TRNG EQPT	--	---	--	10,000	--	+10,000
UPGRADE CIVIL ENGINEERING EQUIP	--	---	--	2,000	--	+2,000
AUTOMATIC BUILDING MACHINES	--	---	--	5,000	--	+5,000
CH-47 SIMULATOR	--	---	--	15,000	--	+15,000
CH-47 FADEC UPGRADE	--	---	--	9,600	--	+9,600
MOVING TARGET SIMULATOR	--	---	--	5,000	--	+5,000
IFTE	--	---	--	10,000	--	+10,000
SINCGARS RADIOS	--	---	--	75,000	--	+75,000
AN/PSG-7 DIGITAL DATA SET	--	---	--	9,700	--	+9,700
AIR NATIONAL GUARD						
C-130 AIRCRAFT	--	---	2	63,000	+2	+63,000
LOCASS	--	---	--	1,800	--	+1,800
APX-109	--	---	--	7,400	--	+7,400
MCE/TASCI P3I	--	---	--	17,900	--	+17,900
KC-135 RADAR UPGRADE	--	---	--	15,000	--	+15,000
TACS ANM DECOYS	--	---	--	42,200	--	+42,200
FIREARMS TRAINING EQUIPMENT	--	---	--	10,000	--	+10,000
TOTAL, NATIONAL GUARD EQUIPMENT		---		467,600		+467,600
TOTAL, NATIONAL GUARD & RESERVE EQUIPMENT		---		1,178,100		+1,178,100

COMMITTEE RECOMMENDATIONS

KC–135 APN–59 RADAR UPGRADE

The Committee recommends $15,000,000 only for the procurement of antenna and receiver/transmitter subassemblies to com-

plete the on-going upgrade of 70 1950's era APN-59 radars on Air National Guard KC-135 aircraft. This backfit should be accomplished rapidly by flight line crews, at minimum cost and manpower, and without modifications to the existing wiring or structure of the aircraft.

ENGINEER EQUIPMENT

The Committee recommends $15,000,000 for engineer equipment, as authorized. These funds are to be used to upgrade existing Army Reserve T-9 medium tractors from the "E" and "F" configuration to the more modern "G" models.

The Committee has also added $2 million for laser assisted civil engineering equipment which will achieve impressive cost savings.

MOBILE IN-SHORE UNDERSEA WARFARE VANS

The Committee recommends an increase of $21,000,000 for the mobile in-shore undersea warfare van upgrade program. The funding is to be used for continued procurement and integration of upgraded MIUW sensor system, including upgraded AN/SQR-17A processor on AN/ALR-66 ESM systems.

Additionally, the Committee has included $11,000,000 for procurement of AN/SQQ-T1 trainers for use by Naval Reserve MIUW units.

MOVING TARGET SIMULATOR

The Committee has included $5,000,000 for a Moving Target Simulator (MTS) for the North Dakota Army National Guard.

SURFACE WARFARE TACTICAL TRAINER

In fiscal year 1993 the Committee provided $8,750,000 to modernize the current combat training capability of the Naval Reserve Fleet. It is the Committee understanding that the Department of the Navy has a requirement for a surface warfare tactical trainer (SWTT) to provide a capability for individual and team tactical proficiency training emulating the Surface Navy's core combat systems at the Surface Warfare Officer's Schools Command (SWOSCOLCOM) at Newport, Rhode Island. It is also the Committee's understanding that the Navy has in place a program which will address this requirement through the use of previously developed simulators, display emulators and commercial-off-the-shelf-equipment. The Committee is fully supportive of this program and directs that fiscal year 1993 appropriated funds for Naval Reserve training modernization be used for this purpose.

AN/PSG-7 DIGITAL DATA SET

The Committee recommends an additional $9,700,000 for the Army National Guard and Reserve to procure an additional 700 AN/PSG-7 Digital Data Set (Forward Entry Device) units to complete the Interim Fire Support Automated System (IFSAS) modernization.

Air Force Reserve

C–130H

In fiscal year 1993 Congress provided $120,000,000 for the acquisition of four C–130H aircraft for the Air Force Reserve. These aircraft were intended for the 910th Tactical Airlift Group at Youngstown, Ohio. The Committee directs the Department to proceed expeditiously with the fielding of these planes to the Youngstown reserve unit. A report detailing the deployment plan of these aircraft shall be provided to the Committee no later than December 1, 1993.

DEFENSE PRODUCTION ACT PURCHASES

Appropriations, 1993	....
New obligational authority, 1994:	
Estimate	....
Recommended	$200,000,000
Increase	200,000,000

The Committee recommends $200,000,000 for fiscal year 1994. These funds will provide financial incentives to increase the industrial capacity of the United States to procure certain goods essential to defense needs. The Committee expects to be kept informed as each project is negotiated and eventually finalized.

Committee Recommendations

The amount recommendod in the bill is for the Active Matrix Liquid Crystal Flat Panel Display Project, Naval Nuclear Propulsion Projects, and other projects which are critical to the domestic industrial base. These funds may also be used to fund future phases of any project already approved and to initiate new projects for industrial resources or critical technology items approved by a Presidential determination made in accordance with the Defense Production Act.

Previously, Congress appropriated procurement funds, which were available for three years, to finance projects. They were carried on the books as being obligated for the approved project. However, if the project proved successful, the funds were not expended and eventually returned to the Treasury.

The $200,000,000 recommended for fiscal year 1994, which continues the program started in fiscal year 1990, will remain available to the Department until expended. This will allow the eventual use of deobligated funds to continue subsequent phases of previously approved programs. The Committee expects to be notified sixty days prior to the release of any funds for projects not previously approved by Congress.

ACTIVE MATRIX LIQUID CRYSTAL DISPLAY PROJECT

The Committee recommends the maximum funding for the active matrix liquid crystal display project that is intended to ensure a viable and expanded United States source of such flat panel displays for avionics programs and other military applications. Consistent with the Defense Production Act's objective to establish a viable United States source for such defense critical components,

the Committee requests the Department to amend the Federal Acquisition Regulations to require the procurement of active matrix liquid crystal displays only from United States manufacturers.

NAVAL NUCLEAR PROPULSION

The capability to manufacture naval nuclear propulsion components is essential to national security. In order to maintain the critical capability and the vital skills associated with naval nuclear propulsion, the Department of Defense is directed to find a mechanism to provide incentives for domestic sources to commercialize. By assisting in the commercialization, the overall cost to the Navy can be stabilized. Without such assistance, the cost of future submarine, aircraft carrier, and other naval reactor components will rise precipitously and the capability to produce these components will be greatly diminished or lost. Accordingly, the Committee recommends $24,000,000 only to commercialize naval nuclear reactor heavy components and $20,000,000 only to commercialize cold drawn, seamless naval reactor steam generator tubing.

ACCELERATED COOLED/DIRECT QUENCHED STEEL

In previous appropriations, the Committee approved a project for the Department of Defense to establish production capacity for accelerated cooled/direct quenched steel. The Committee recognizes that with the decrease in the Navy's shipbuilding program, there is a decrease in DoD demand for this steel. The Committee, nevertheless, feels that this steel has significant commercial demand and wants to see the DoD carry this dual-use project to fruition. This is consistent with the Defense Production Act Amendments of 1992 which allows DoD to include commercial demand in determining military demand.

TITLE IV

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

ESTIMATES AND APPROPRIATIONS SUMMARY

The fiscal year 1994 Department of Defense research, development, test and evaluation budget totaled $38,620,327,000. The accompanying bill recommends a total program of $36,546,014,000. The total amount recommended is $1,688,834,000 below the total program provided in fiscal year 1993. The table below summarizes the budget estimates and the Committee's recommendations:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
RECAPITULATION			
RDTE, ARMY	5,249,948	5,560,082	+310,134
RDTE, NAVY	9,215,604	8,604,777	-610,827
RDTE, AIR FORCE	13,694,984	12,608,995	-1,085,989
RDTE, DEFENSE AGENCIES	10,174,549	9,526,918	-647,631
RDTE, DIRECTOR OF TEST AND EVALUATION	272,592	232,592	-40,000
OPERATIONAL TEST AND EVALUATION	12,650	12,650	---
GRAND TOTAL, RDTE	38,620,327	36,546,014	-2,074,313

CONGRESSIONAL INTEREST ITEMS

Items for which funds have been specifically earmarked in report language within program elements funded in the Research, Development, Test and Evaluation appropriations using the phrases "only for" or "only to" are Congressional interest items. DD Form 1414 for the affected fiscal year 1994 RDT&E appropriations shall show them as special Congressional interest items, a funding decrease to which requires prior approval from Congress. Each of these items must be carried on DD Form 1414 at the stated amount or a revised amount if changed during conference action on this bill, unless the item is denied in conference or if otherwise specifically addressed in the conference report.

"NEW START" REPROGRAMMING

The Committee denied several new start programs during its consideration of the Omnibus Reprogramming submitted in June. Due to the lateness in the fiscal year when the document was received, the Committee felt a delay of a few months until the next fiscal year was not unreasonable for new efforts. Recognizing that some programs, which were not anticipated at budget submission, may need to be started during that fiscal year, the Committee recommends that they be submitted earlier in the cycle and not await

the Omnibus reprogramming. This will allow the Committee sufficient time to evaluate the merit of beginning a new start during fiscal year execution.

CLASSIFIED PROGRAMS

Reductions or additions to certain classified programs are explained in a classified report or a classified letter to accompany this report.

OVERHEAD GENERAL REDUCTION

The Committee is concerned that in this era of declining Defense budgets, not enough attention is being applied to reducing research and development support costs.

Accordingly, the Committee recommends a general reduction of $500,000,000, as follows: Army, $70,000,000; Navy, $120,000,000; Air Force, $180,000,000; and Defense-wide, $130,000,000. The Committee directs that these reductions should not be taken from research and development projects, but should come from overhead programs, such as management and support activities in headquarters, laboratories, ranges and Federally Funded Research and Development Centers.

FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS (FFRDCs)

Federally Funded Research and Development Centers (FFRDCs) are privately operated organizations sponsored by Government agencies to work in all areas of basic or applied research.

For several years, this Committee, and the Congress, has expressed concern about the lack of control over management and funding of the FFRDCs. In August 1992, the Department of Defense submitted an FFRDC management plan which outlines FFRDC policy and procedures, organizations, and management responsibilities. The Committee believes that this is a good first step, but it falls short in several areas. The management plan contains only limited guidance on financial responsibilities, and it does little to consolidate the scattered responsibilities among the DOD sponsors. Since the plan does not address the lack of uniform cost accounting standards among the FFRDCs, there will continue to be no assurance FFRDC costs are accurate. The Committee recommends that the Department continue to refine its management plan, specifically in the areas of accountability and financial oversight.

In fiscal year 1992, the $1.4 billion provided to the Department of Defense's (DOD) 12 FFRDCs represented almost 4 percent of the entire DOD Research, Development, Test and Evaluation budget for that year. The fiscal year 1993 funding for FFRDCs is expected to increase by approximately $27 million over the prior year, with approximately $1.2 billion, 86 percent of the total funding, going to the five FFRDCs sponsored by the Air Force.

For the last several years, the Congress has made general reductions in funding, which were to be applied to FFRDC activities. How well the Department implemented them is not clear. Part of the problem is the difficulty of comparing actual costs in a prior fis-

cal year to a proposed ceiling in the current fiscal year. According to a letter from the Director of Defense Research and Engineering, dated July 16, 1993, the Department of Defense has adjusted its management plan to bring the original fiscal year 1994 ceiling of $1.6 billion down to the actual fiscal year 1992 level of $1.4 billion. The Committee believes that this is a step in the right direction and encourages the Department to implement this change and to make even further reductions when it submits the fiscal year 1995 ceilings for FFRDCs.

The underlying cause for the continued inadequate management control is that FFRDCs remain outside the framework of DOD's financial management information system. The current patchwork of cost, accounting, and auditing controls at FFRDCs precludes having timely, sufficient, or reliable information from which to make well-reasoned management decisions. Therefore, the Committee recommends that the management plan should be adjusted to expand the DOD Comptroller responsibilities to include a system for recording expenditures and tracking and justifying FFRDC levels.

The fiscal year 1994 report of the House Budget Committee recommended that employees of DOD's FFRDCs, as well as of DOE's National Laboratories, should be treated like federal employees when it comes to future pay raises and COLA adjustments. DOD has no policy regarding either pay adjustment or COLAs for FFRDC employees. This absence of policy is simply because FFRDC employees are not Government employees and are, therefore, not subject to either civil service or Federal retirement mandates. As employees of private industry corporations, they are subject only to the renumeration policies applied by the parent corporations. The Committee recommends that the DOD submit a report to the Committee on the feasibility of establishing pay caps for FFRDC employees to further contain cost growth.

The Committee recommends retaining subsection (a) of section 8064 which prohibits the obligation of funds to finance FFRDCs if a member of its Board of Directors or Trustees simultaneously serves on the Board of Directors or Trustees of a profit-making company under contract to the DOD unless the FFRDC has a DOD approved conflict of interest policy for its members.

The Committee also recommends retaining subsection (b) of section 8064 which prohibits the obligation of funds to establish a new FFRDC either as a new entity, or as a separate entity administered by an organization managing another FFRDC, or as a nonprofit membership corporation consisting of a consortium of other FFRDCs and other nonprofit entities.

AUTOMATIC TEST SYSTEMS (ATS)

Automatic Test Systems (ATS) are used for electronic testing of weapon systems at contractor facilities and at all levels of Department of Defense (DOD) maintenance facilities. DOD ATS systems are technically complex and as costly as the weapon systems they support, up to $1 or $2 billion. An estimated $100 billion was spent on ATS between 1980 and 1992, and DOD projects another $11 billion through 1999.

Investment Strategy: Language in last year's conference report on the fiscal year 1993 Defense Appropriations Act directed the Sec-

retary of Defense to develop a DOD-wide policy requiring Automatic Test Equipment (ATE) commonality in standards among the Services along with an oversight system to ensure compliance.

The Department of Defense issued a partial report on Automatic Test Systems (ATS) on May 20, 1993. The Committee believes that this is a good first step and encourages the Department to develop needed policy implementation and submit a final report.

The DOD Investment Strategy Study of Automatic Test Systems (ATS) found that substantial changes to current ATS acquisition and management practices are needed. Sizeable cost savings and operational benefits are possible if the DOD eliminates service unique and weapon system unique ATS acquisitions and instead uses a limited set of designated DOD ATS families to meet its ATS needs.

The Committee recommends that the Secretary of Defense direct an acquisition policy requiring the use of designated DOD ATS families for weapon system/equipment testing needs, as outlined in the ATS Investment Strategy Study report. Procedures for determining ATS family application and for adding ATS families should be defined and controlled by the Office of the Secretary of Defense (OSD). OSD should also establish a formal DOD implementation mechanism with sufficient authority, staffing, and funding to ensure strategy compliance.

Weapon-system Unique ATE: In addition, last year's conference language stated:

> In the interim, before any of the Services, and particularly the Department of the Air Force, can develop or procure weapon system-unique automatic test equipment, the Secretary of Defense must submit a cost/benefits analysis to the congressional defense committees. This cost/benefits analysis must include a comparison of the recommended system with existing systems within the Department of Defense, the IFTE or CASS system, modified IFTE or CASS system, and modular components of existing systems. This analysis should also address the impact on weapons systems development schedules.

Most ATS (ATE) procured by the Services during the past 25 years are system-unique and designed to support a single weapon system. Experience has demonstrated that unique ATE has a limited life cycle and is costly to support, upgrade, or redesign. According to the Committee's Surveys and Investigative Staff Study on ATE, about 73 percent of the $11 billion projected to be spent on ATE through 1999 will be on system-unique ATE. This is despite the fact that the Secretary of Defense study submitted to the Committee contends standardized ATE systems being developed by the Army and Navy can meet about 95 percent of DOD's present and future requirements at cost savings of 35 percent over system-unique ATE.

The Committee believes, as was stated in last year's report, that the Air Force continues to develop and procure unique ATS for various systems, such as the F–22 Advanced Tactical Fighter. Therefore, the Committee recommends that the Secretary of Defense review all ATS (ATE) acquisitions underway and currently planned

for weapon system programs and for depot acquisitions (especially those of the Air Force); determine where the DOD ATS families should be applied; and direct changes as needed.

Summary: Based on the above, the Committee recommends that:

(1) the Under Secretary of Defense for Acquisition should review and approve DOD's proposed acquisition policy defining and requiring the use of standardized ATS for DOD weapon system/equipment test and maintenance without further delay;

(2) the Under Secretary of Defense for Acquisition should establish a separate R&D program for future ATS technology for needed family modifications and research and development for next generation ATS; and

(3) the Under Secretary of Defense for Acquisition should ensure that an OSD-approved cost/benefits analysis is submitted to the congressional defense committees prior to the development or procurement of weapon system-unique ATS. [Note: For purposes of reference, ATE and ATS are synonymous.]

TECHNOLOGY BASE

The Committee recommends that the technology base level of the Department should be held to the fiscal year 1992 actual levels. Accordingly, the Committee recommends the following reductions due to fiscal constraints: Navy, $84,000,000; Air Force, $200,000,000; and Defense-wide, $35,000,000.

SMALL BUSINESS INNOVATIVE RESEARCH/SMALL BUSINESS TECHNOLOGY TRANSFER

The Committee recommends adjusting the amount appropriated for the Small Business Innovative Research/Small Business Technology Transfer program to reflect the overall total funding recommended in the bill for the specific RDT&E appropriation. The Committee does not agree to a proposed new general provision making SBIR funding a percentage of the requested budget rather than of the appropriated amount.

SECURITY/SCOUT VEHICLES

The Army and the Marine Corps have budgeted procurement and research, development, test and evaluation funds for armored security/scout type vehicle modernization programs to satisfy selected military police, infantry, scout, and other related requirements, some of which are new starts in fiscal year 1994. In addition, the Committee understands that the Air Force requested $225,000 to procure 3 M-1097 HMMWV up-armored vehicles in fiscal year 1994 and may also be considering a new RDT&E program. Rather than each of the Services embarking on its own program, the Committee believes that security/scout vehicle modernization needs should be addressed as a joint-service effort. Therefore, the Committee recommends denial of the Air Force procurement effort and the following RDT&E projects:

	Program element	Funding (thousands)
Light Tactical Wheeled Vehicles (Armored Security Vehicle)	0604642A	$2,064

	Program element	Funding (thousands)
Light Strike Vehicle	0206624M	2,458
Marine Corps Expeditionary Vehicle	0603640M	6,799
Total		11,321

The Committee recommends an additional $5,000,000 in program element 0603228D, Physical Security Equipment, for a joint-Service program for security/scout vehicles. Technology derived from the Light Contingency Vehicle program and the Unmanned Ground Vehicle program should be leveraged wherever feasible.

MANUFACTURING TECHNOLOGY

Prior to September 1992, OSD oversight for the manufacturing technology program resided in the Office of the Assistant Secretary of Defense for Production and Logistics. Because of functional duplication between OSD (P&L) and ARPA and perceived management deficiencies, this oversight function was moved by the Undersecretary of Defense for Acquisition to the Director for Defense Research and Engineering. While the P&L oversight did not provide a technology viewpoint, it did through coordination with the Services provide a linkage to production and acquisition programs. The Committee believes that the current DDR&E oversight and the concomitant fiscal year 1994 budget lacks this critical linkage, since DDR&E has neither the purview over nor the cultural focus toward production. The Department's 1994 budget request for manufacturing technology resembles more of a 6.2 research demonstration and less of addressing real world problems of preduction and logistics. The Committee believes there could be a strong role to play by the DDR&E, but it would be in the area of manufacturing science rather than manufacturing technology. The distinction is that manufacturing science is driven by technological opportunity while manufacturing technology is driven by system requirements. The Committee believes that the manufacturing technology program planning, budgeting, and execution must be tied directly to weapon system applications and this in turn dictates the need for Service rather than OSD level programs. What is clearly required is an overall coordinator for both the DDR&E manufacturing science effort and the Services manufacturing technology efforts. Such an oversight function should provide a single focus for technical integration and coordination of plans and budgets, but not for technical or budgetary control. The Committee would be open to such an arrangement by the Undersecretary of Defense (Acquisition) in the future. As explained elsewhere in this report, the Committee has denied funds for a centralized manufacturing technology program under the Office of the Secretary of Defense and has provided funds in each of the Service accounts. The Committee has also provided funds in the Army and Navy to more closely link the existing government Centers of Excellence with the National Institute of Standards.

TRI-SERVICE STANDOFF ATTACK MISSILE (TSSAM)

The Committee recommends that all funds budgeted for the Tri-Service Standoff Attack Missile (TSSAM) be denied as explained in a classified letter accompanying this report. Despite a limited number of recent successful, but carefully orchestrated, test flights of the missile, the program remains an acquisition horror story. Development and acquisition unit costs continue to escalate sharply while projected quantities continue to decrease each year.

The program has experienced a huge cost overrun and years of schedule delay. The General Accounting Office (GAO) recently identified major software glitches in the weapon's mission planning system which make achievement of the test schedule unlikely, and if left uncorrected, make the missile impossible to operationally deploy. Last fall, the Army attempted to withdraw from the program. The Navy continues to significantly lower its planned purchases. For these and other disturbing reasons, the Committee cannot recommend that this troubled program continue.

MEDICAL RESEARCH

The Committee recommends the following levels highlighted in the table below for the military services' medical research programs:

		Budget	Committee recommended amount	Difference
	Research, Development, Test and Evaluation, Army			
0601101A	In-House Lab Ind Resr	4,378	4,378	0
0601102A	Def Res Sciences	48,989	49,239	+250
	Nutrition	0	(250)	(+250)
0602787A	Med Technology	86,711	87,461	+750
	Nutrition	0	(750)	(+750)
0603002A	Medical Adv Tech	40,346	112,996	+72,650
	Def. Women's Health Prog	0	(40,000)	(+40,000)
	Environ. Med. Unit	0	(1,200)	(+1,200)
	Nutrition	0	(750)	(+750)
	Breast Cancer	0	(25,000)	(+25,000)
	Prostate Cancer	0	(2,000)	(+2,000)
	Depleted Uranium Study	0	(1,700)	(+1,700)
	Post Polio Syndrome	0	(1,000)	(+1,000)
	Hypoglycemia	0	(1,000)	(+1,000)
0603105A	AIDS	3,410	33,410	+30,000
0603807A	Med Sys - Adv Dev	27,628	27,628	0
0604807A	Med Mat/Med Bio Def Eq	21,128	21,128	0
0605801A	Med Cmd Spt	5,197	5,197	0
0605898A	Mgmt HQs	3,873	3,873	0
	Subtotal	241,660	345,310	+103,650
	Research, Development, Test and Evaluation, Navy			
0601152N	In-House Lab Ind Res	1,290	1,290	0
0601153N	Def Res Sciences	2,914	2,914	0
0603216N	Aviation Survivability	1,770	3,770	+2,000
	Naval Biodynamics Lab	0	(2,000)	(+2,000)
0602233N	Miss Spt Technology	4,550	4,550	0
0603706N	Medical Development	16,956	60,148	+43,192
	Naval Biodynamics Lab	0	(1,000)	(+1,000)
	Bone Marrow	0	(+37,000)	(+37,000)
	POW Medical Update	0	(192)	(+192)

		Budget	Committee recommended amount	Difference
	Breast Cancer Center	0	(5,000)	(+5,000)
0603713N	Ocean Engin. Develop.	5,877	5,877	0
0603792N	Adv Tech Transition	2,344	844	−1,500
	Freeze-Dried Blood	(2,344)	(844)	(−1,500)
0604771N	Medical Development	4,030	4,030	0
0605152N	Studies & Analysis	110	110	0
0605856N	Strategic Tech Spt	1,154	1,154	0
0605861N	RDT&E Sci & Tech Mgmt	7,913	7,913	0
0605862N	RDT&E Inst Med	3,946	3,946	0
	Subtotal	52,854	96,546	+43,692
	Research, Development, Test & Evaluation, Air Force			
0604703F	Aeromedical Sys Dev	2,651	2,651	0
0605306F	RANCH HAND II	3,707	3,707	0
	Subtotal	6,358	6,358	0
	Research, Development, Test & Evaluation, Defense Agencies			
0601101D	In-House Lab Ind Res	3,368	3,368	0
0601102D	Def Medical Science	2,021	2,021	0
0602227D	Medical Free Electron	19,248	19,248	0
0602787D	Def Medical Technology	6,737	6,737	0
0603002D	Medical Adv Technology	4,701	11,001	+6,300
	Sandia Lab Research	0	(4,000)	(+4,000)
	Cell Adhesion Molecule	0	(2,300)	(+2,300)
0603738D	Cooperative DOD/VA Res	0	30,000	+30,000
	Subtotal	36,075	72,375	+36,300
	Total	336,947	520,589	+183,642

ARMY RESEARCH

DEFENSE WOMEN'S HEALTH RESEARCH PROGRAM

The Committee has recommended $40,000,000 only to be used for research on women's health issues related to service in the armed forces. In addition, the Committee has recommended $25,000,000 to continue the breast cancer research program begun by this Committee in fiscal year 1992.

ENVIRONMENTAL MEDICAL UNIT

The Committee recommends $1,200,000 for an environmental medical unit research project at the University of Texas Health Science Center in San Antonio, Texas, aimed at researching Persian Gulf War veterans experiencing a disabling syndrome possibly related to low level chemical sensitivities.

NUTRITION RESEARCH

The Committee recommends $1,750,000 only for various nutrition research projects as follows:

0601102A:	Defense research science	$250,000
0602787A:	Medical technology	750,000
0603002A:	Medical advanced technology	750,000

This funding is available to continue ongoing military nutrition research projects on stable isotope energy assessment, nutritional

neuroscience research, and nutrition and military performance clinical laboratory research. The Committee also directs that this funding be used on new military nutrition research projects of importance to the Army, including menu modification and clinical nutritional neuroscience research, utilizing existing cooperative agreements between the Army and unique clinical research and staple isotope laboratories. The Committee directs the Army and the Department to budget for military nutrition research utilizing these unique laboratories in fiscal year 1995 and beyond.

DEPLETED URANIUM STUDY

The Committee has included $1,700,000 as recommended by the House Armed Services Committee for the Department to conduct a medical study of the effects of depleted uranium on military personnel.

POST POLIO SYNDROME RESEARCH

The Committee is aware that improper muscle exercise and training techniques are a frequent cause of injury in military recruits, and overuse (Cumulative Trauma Disorders) is a major cause of disability in both the military and American work force. With a broader understanding of muscle physiology and response to overuse, potentially, many of these injuries can be prevented.

Polio is a unique disease, which affects only muscle strength. It does not affect the brain's control of muscles like a cerebrovascular accident, traumatic brain injury, or spinal cord injury. As polio does not affect sensation in the limbs, study of this disease is an ideal model to study effects of overusing muscles whether normal or weak.

The Committee recommends $1,000,000 for a research study project on the orthopaedic effects of post polio syndrome to serve as a model to investigate the overuse of muscles, ligaments, bones and joints for the purpose of curtailing military training and work place injuries. Requirements for conducting this study project should include a facility or institution which has a well established orthopaedic post polio program with a patient base of at least 200 patients; researchers experienced in orthopaedic rehabilitation; a Gait and Motion Analysis Laboratory with multichannel dynamic electromyography capabilities; isokinetic muscle testing facilities; and an on-site orthotocis department.

BREAST CANCER RESEARCH

The Committee continues to support further research using new technologies to improve the early detection and improved treatment of breast cancer. The committee is aware of high quality, non-ionizing ultrasound imaging research that can portray in real time and in high resolution, the condition of internal human tissue. It is also aware of a new development that can produce high quality, full breast x-ray imaging digitally. These imaging technologies can be powerful tools for initial detection and for improving treatment efficacy, as well as for lowering costs related to breast cancer. Of the funds allocated for breast cancer research, $10 million is included for a demonstration and measurement program to evaluate the sig-

nificance of both the ultrasound and full breast digital imaging technologies.

The Committee also directs the Department of the Army to award, on a competitive basis, grants of $5 million each to three geographically dispersed medical institutions which offer new advances in applied research and model systems of health care delivery for breast cancer, including early detection, prevention, treatment, education, and community outreach. These grants will be available only to institutions that have dedicated breast cancer centers providing accessible treatment and timely application of new protocols. The recipient institutions will have prior demonstrated experience serving as regional magnet facilities for doctor education and patient services through the most modern teaching and teleconferencing methods. Further, preferential treatment shall be provided to institutions that have made new advances to rationalize the cost of health care delivery through mergers, consolidations and other efforts to curb health care costs.

HYPOGLYCEMIA RESEARCH

The Committee recommends an additional $1,000,000 only for a joint venture project involving a western Pennsylvania educational institution to develop and test a new form of insulin which will prevent hypoglycemia in dependents of active duty military members.

MULTI PRODUCT COMPARATIVE TRIAL OF AIDS VACCINES

The Committee recommends that of the funds previously appropriated in Title IV, Research, Development, Test and Evaluation, Army; Public Law 102–396, such funds may be made available in the Acquired Immune Deficiency Syndrome program element for a multi-product comparative HIV vaccine trial only if a protocol similar to that designed by the National Institute of Health/Food and Drug Administration Advisory Panel on the U.S. Army Therapeutic HIV vaccine trial is adopted utilizing vaccine products provided without cost to the government by the manufacturer for that purpose.

NAVY RESEARCH

FREEZE-DRIED BLOOD

Last year, the Committee supported the Navy's decision to place a high priority on improving red blood cell storage and to make freeze-dried red blood cells the only non-weapon advanced technology demonstration in the Navy. Since that time, the program has taken an unusual twist which has caused at least one principle player to back out of this research effort. Therefore, the Committee has decided to reduce the scope of this research offort back to its previous level, given the revised emphasis away from freeze-dried preservation of intact human red blood cells and platelet.

MEDICAL DEVELOPMENT (NAVY)

The Committee has provided $37,000,000 for bone marrow research, donor recruitment, and tissue typing. The Committee is aware of the continuing outstanding success of the National Mar-

row Donor Program (NMDP), a life-saving program which now includes 920,000 potential volunteer donors. With funding provided by the Committee, more than 270,000 volunteers were tissue typed in the past 12 months.

The Committee has added $37,000,000 only to the C.W. Bill Young Marrow Donor Recruitment and Research Program, a special interest program within the Navy Medical Research and Development account, to continue national donor recruitment programs, expand formal international agreements with foreign donor registries, and advance research that will continue to improve the tissue typing procedures for matching patients and donors. Of this amount, $12,400,000 is to be made available to the Navy Medical Research and Development Command's C.W. Bill Young Marrow Donor Recruitment and Research Program for continuing its Department-wide donor recruitment effort and to maintain its research program for the development of state-of-the art DNA tissue typing technology. The provisions of the Small Business Innovation and Research Act of 1982 shall not apply to this program.

The Navy has provided invaluable leadership in the development and operation of the NMDP. The Navy's C.W. Bill Young Marrow Donor Recruitment and Research Program has recruited 34,000 service members and their dependents to join the registry and has provided marrow for more than 50 transplants. The Navy Medical Research Institute laboratory has fully implemented HLA typing by direct analysis of genetic material from donor's blood cells. The Navy also has assisted civilian clinical and research laboratories supporting the NMDP to transform DNA based typing from the research lab to full clinical utilization. To date, over 20,000 DOD and 25,000 civilian NMDP volunteers have been typed using this new technology, which has made donor-recipient matching far more precise than previous technology and has become the standard requirement for marrow transplantation. Navy automation technology will continue to improve both cost effectiveness and capacity for this DNA technology for both the Navy and civilian laboratories.

The remaining $24,600,000 will be provided by the C.W. Bill Young Marrow Donor Recruitment and Research Program to the NMDP, through its continued grant from the Navy Medical Research Development Command, for donor recruitment and education activities.

The Committee believes that donor recruitment is a high priority in all sectors with continued emphasis upon minority groups. With dedicated funding provided by the Committee, the NMDP has increased the number of minority donors to 148,300. During the past 12 months, 29 percent of newly recruited U.S. donors represented minority groups. The Committee provides an additional $3,000,000 to NMDP for its minority outreach recruitment effort.

The Committee is encouraged by the targeted minority recruitment program initiated by the NMDP in major cities throughout the nation. Furthermore, the Committee would encourage donor recruitment groups interested in working to increase minority donor participation to subcontract through the NMDP for minority education, donor recruitment, and tissue typing funds provided by the Committee.

CENTER OF EXCELLENCE IN BREAST CANCER

The Committee recommends $5,000,000 to establish a Center of Excellence in Breast Cancer at the National Naval Medical Center. A primary role of this Center would be to train medical personnel in specialized methods of early detection and treatment, focusing on the young population for which routine mamographic screening is inappropriate.

Over the past two years, the Committee has recommended $235,000,000 for breast cancer research. Until research can discover a way to prevent breast cancer or detect cancer at the molecular level, careful surveillance is a woman's only means of protection. Young women serving on active duty and the spouses of military personnel deserve the assurance that military medicine can provide state-of-the-art diagnosis and treatment. The establishment of a Center of Excellence in Breast Cancer will be an important step in assuring that care.

PRISONER OF WAR MEDICAL STUDY UPDATE

The Committee recommends $192,000 for the Naval Aerospace Medical and Operational Institute to complete a 20-year medical research study update on Air Force aviators who served time in Vietnamese prisoner of war camps.

DEFENSE-WIDE RESEARCH

CELL ADHESION MOLECULE RESEARCH

The Committee recommends an increase of $2,300,000 to Defense-wide research and development only for cell adhesion research. This research, which is non-university related, is important to the Department of Defense for readiness of military personnel. Specifically, the goal of this research is for the Department to work with a non-profit foundation in the northeast to understand the role of cell surface adhesion molecules in inflammatory reactions such as allergic rhinitis and atopic allergic conditions. The overall hypothesis is that the expression or activity of specific cell surface adhesion molecules contributes to certain inflammatory reactions. This immunological research should be performed by an integrated team of scientists with extensive experience in the molecular analysis of the immune system. In particular, the scientific team must have extensive experience in the identification and analysis of cell adhesion, signal transduction pathways, cytokine production, and gene regulation.

HEALTH CARE AND BIOMEDICAL ENGINEERING TECHNOLOGY

In supporting the Department's technology transfer activities, the Committee recognizes that a significant portion of the advanced technologies developed by the national laboratories' weapons research may have dual use applications in the field of biomedical engineering. There is a great potential for lowering health care costs, providing earlier diagnoses, and improving the quality of health care by suitable application of advance technology. Therefore, the Committee has provided $4,000,000 above the President's budget request in Medical Advanced Technology (PE0603002D) and directs

the Department to provide this funding only to Sandia National Laboratories to develop a plan to systematically identify and apply those defense related technologies and support technology transfers that can contribute to reduction of health care costs and improvements in health care for our citizens and the services. The Committee directs that this initiative be jointly managed by Sandia and appropriate medical research centers.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY

Appropriations, 1993	$6,032,860,000
New obligational authority, 1994:	
Estimate	5,249,948,000
Recommended	5,560,082,000
Increase	310,134,000

This appropriation funds Research, Development, Test and Evaluation activities of the Army.

COMMITTEE RECOMMENDATIONS

AUTHORIZATION CHANGES

The Committee recommends the following changes, in accordance with authorization action:

[In thousands of dollars]

	Request	HASC	HAC	Change
Electromechanics and Hypervelocity Physics	3,712	8,712	8,712	+5,000
Laser Weapons Technology	510	5,510	5,510	+5,000
Modeling and Simulation		10,000	10,000	+10,000
Chemical, Smoke and Equipment Defeating Technology	37,766	51,985	51,985	+14,219
Weapons and Munitions Technology	34,794	38,794	38,794	+4,000
Airborne Reconnaissance Low (ARL)		7,760	7,760	+7,760
Missile and Rocket Advanced Technology	46,497	35,997	35,997	−10,500
Joint Service Small Arms Program	5,529	7,529	7,529	+2,000
Non-Line of Sight	34,702			−34,702
Tactical Surveillance System; Advanced Development	15,422	12,422	12,422	−3,000
Tactical Electronic Surveillance System—Advanced Development	15,373	10,373	10,373	−5,000
Logistics and Engineer Equipment—Advanced Development	14,695	19,695	19,695	+5,000
NBC Defense System—Advanced Development	32,163	40,944	40,944	+8,781
Automatic Test Equipment Development	14,472	23,472	23,472	+9,000
Tactical Electronic Surveillance System—Engineering Development	52,547	37,547	37,547	−15,000
Non-Cooperative Target Recognition—Engineering Development	34,547	46,547	46,547	+12,000
Environmental compliance	44,014	48,014	48,014	+4,000
Contract Administration/Audit	92,012			−92,012

PROGRAM GROWTH/BUDGET EXECUTION ADJUSTMENTS

The budget request included amounts for some programs which exceed by unjustifiably large margins the amounts provided for fiscal years 1992 or 1993. Other programs had significant prior year unobligated balances, and budget adjustments are necessary due to poor budget execution. The Committee accordingly recommends the following reductions:

[In thousands of dollars]

	Request	HASC	HAC	Change
Defense Research Sciences	203,695	208,295	188,695	−15,000

[In thousands of dollars]

	Request	HASC	HAC	Change
Missile and Rocket Adv Technology	46,497	35,997	35,997	−10,500
Non-system training devices—eng dev	62,669	62,669	52,669	−10,000

HORIZONTAL BATTLEFIELD INTEGRATION

Last year, Congress appropriated funds for an Inter-Vehicular Information System (IVIS) Demonstration. A limited test demonstration was successfully conducted in March 1993. The Committee recommends that the Army build on its initial demonstration and conduct a fully developed test of an inter-vehicular information system for application to the full maneuver force as well as refining its interoperability with existing aviation, intelligence, and indirect fire systems. Therefore, the Committee recommends an additional $25,000,000 in a new program element line to begin the program of integrated system development and operational testing of an inter-vehicular information system capability. This new program element is established to assure that platform oriented programs are tested on a fully integrated basis and that realistic testing will provide the basis for the evolution of integrated combined arms capabilities.

The Committee's recommendation fully supports the Army's efforts to horizontally integrate its weapons platforms by digitizing its existing force. In addition to the funds provided above, the Committee has included funding above the budget request to accelerate the Bradley A3 Upgrade program and the Bradley Command and Control Vehicle programs, and to upgrade aircraft avionics. The Committee expects that accelerating these programs will complement the Abrams upgrade program and implement battlefield digitization sooner. The Committee directs the Army to report back by April 1, 1994, on its near-term and long-terms efforts to fulfill its goal of horizontal battlefield integration.

TECHNOLOGY BASE

DEFENSE RESEARCH SCIENCES (0601102A)

The Army requested $203,695,000 for Defense Research Sciences. The Committee recommends $188,945,000, a decrease of $14,750,000 below the budget. This includes a reduction of $15,000,000 as addressed above and an increase of $250,000 as addressed in the Medical Research section.

ELECTROMECHANICS AND HYPERVELOCITY PHYSICS (0601104A)

The Army requested $3,712,000 for Electromechanics and Hypervelocity Physics. The Committee recommends $8,712,000, an increase of $5,000,000 to the budget request.

Institute for Advanced Technology (IAT): The Institute for Advanced Technology (IAT) performs basic research tasks in the areas of electromechanics and hypervelocity physics and education in related technology fields. Since funding to support IAT is included in several program elements, the Committee believes that consolidating it in one program element will help maintain a more stable level of effort.

ELECTRONIC SURVIVABILITY AND FUZING TECHNOLOGY (0602120A)

The Army requested $28,793,000 for Electronic Survivability and Fuzing Technology. The Committee recommends $36,793,000, an increase of $8,000,000 to the request.

UWB Radar Development: The Army requested $1,862,000 for a foliage ponetration (FOPEN) radar program. The Committee recommends an additional $2,000,000 to accelerate this effort, providing $3,862,000 only for the UWB radar development effort.

Passive Microwave Camera: The Committee is aware of the Army Research Laboratory's progress in developing a concept demonstration passive microwave camera that will "see" through fog, smoke, clouds, foliage and wooden structures without radiating. Therefore, the Committee recommends $6,000,000 to conduct measurements and to improve the camera's sensitivity, environmental hardening, resolution and field of view, as well as to incorporate these improvements during the fabrication of platform ready demonstration models for airborne and ground operational scenarios.

AVIATION TECHNOLOGY (0602211A)

The Army requested $34,150,000 for Aviation Technology. The Committee recommends $36,650,000, an addition of $2,500,000 to the budget request.

Advanced Rotorcraft Vectored Thrust Combat Agility Demonstrator (ARVTCAD) Program: During previous years, the Committee has supported technology base initiatives that have the potential for significant enhancement of existing combat helicopter capabilities. Prior year funding for ARVTCAD has included preliminary design of a Vectored Thrust Ducted Propeller (VTDP) that is compatible with both the AH–64 Apache and the AH–1W Cobra helicopters. The Committee is pleased with the Army's implementation of ARVTCAD Phase I and IB and looks forward to its successful completion.

Upon completion of the current joint Army/Marine Corps development effort, the Committee directs that prior to possible implementation of detail design and fabrication of ARVTCAD Phase II flight test program, the Army, with Marine Corps participation, should report back to the Committee the results of the current phase. Successful results will be determined from a comprehensive programmatic and technical report substantiating the technical soundness, cost effectiveness, availability of either an AH–64 Apache or an AH–1W Cobra helicopter for subsequent flight test programs, and military worth of and requirement for an ARVTCAD concept compared to the AH–64 Apache and AH–1W Cobra baseline. This report should also include an ARVTCAD phase II detailed plan and funding profile for consideration.

Accordingly, the Committee recommends $2,500,000 to cover any shortfall in the current development effort and for any required follow-on planning should a decision be made to execute ARVTCAD Phase II flight test program.

LASER WEAPONS TECHNOLOGY (0602307A)

The Army requested $510,000 for Laser Weapons Technology. The Committee recommends $5,510,000, an increase of $5,000,000 above the budget request.

Two laser based technology programs in the medical field were developed by the Army. These programs could create the potential for cost-effective tools that can be used for the treatment of a broad range of human diseases. Accordingly, the Committee recommends $2,500,000 only for solid-state dye laser program and $2,500,000 only for the high powered diode laser program.

MODELING AND SIMULATION (0602308A)

The Committee recommends $10,000,0000 for Modeling and Simulation to continue last year's initiative in advancing the state-of-the-art of and exploiting Advanced Distributed Simulation. The Committee fully supports the Army's Advanced Concepts and Technology initiative to involve industry and academia in providing technologies and concepts for evaluation in simulation and/or experiments at the Battle Labs.

COMBAT VEHICLE AND AUTOMOTIVE TECHNOLOGY (0602601A)

The Army requested $38,994,000 for Combat Vehicle and Automotive Technology. The Committee recommends $54,494,000, an increase of $15,500,000 to the request. Of this increase, $15,000,000 is only for future land vehicle technology as proposed by the House Armed Services Committee.

Air Brakes: In order for the U.S. Army to be made aware of the performance benefits of new air brake technology, it is directed to test and evaluate air-applied, mechanically held, non-spring type brake systems within six months to evaluate their use on its fleet.

These air brake systems have proven to be extremely cost effective and safe in a number of applications, including transportation of hazardous waste, school and transit buses, bulk transport and tank trailers, etc. These systems have been manufactured and supplied over the past ten years.

The Committee recommends $500,000 only for this test program, which is intended to verify that the operating advantages and maintenance cost reduction of air-applied, mechanically held, non-spring type brake systems can be fully realized in DOD applications.

WEAPONS AND MUNITIONS TECHNOLOGY (0602624A)

The Army requested $34,794,000 for Weapons and Munitions Technology. The Committee recommends $38,794,000, an increase of $4,000,000 only for two projects at the Longhorn Army Ammunition Plant as proposed by the House Armed Services Committee.

ELECTRONICS AND ELECTRONIC DEVICES (0602705A)

The Army requested $19,400,000 for Electronics and Electronic Devices. The Committee recommends $27,400,000, an increase of $8,000,000 to the request. This includes the $3,000,000 for battery research as recommended by the House Armed Services Committee; and $5,000,000 only to initiate an effort for preliminary fuel

cell systems design and to advance component technologies involving weight reduction, improving thermal management and the use of liquid fuels. This effort supports lightweight power to increase the survivability and lethality of the individual dismounted soldiers.

ENVIRONMENTAL QUALITY TECHNOLOGY (0602720A)

The Army requested $21,229,000 for Environmental Quality Technology. The Committee recommends $68,729,000, an increase of $47,500,000 to the request. This includes the increases of $43,000,000 as recommended by the House Armed Services Committee, as follows: $24,000,000 for industrial product development, of which $20,000,000 is only to continue a joint Defense/Agriculture project, $2,000,000 is only for bioremediation technologies, and $2,000,000 is only for acceleration of environmental activities at the National Renewable Energy Laboratory (NREL); $10,000,000 only for Unexploded Ordnance remediation at Jefferson Proving Ground; $5,000,000 only for the National Defense Center for Environmental Excellence; and $4,000,000 only for the Bioremediation Education, Science and Technology Centers (BEST).

National Defense Center for Environmental Excellence (NDCEE): The Committee recommends an increase of $5,000,000 only for the National Defense Center for Environmental Excellence (NDCEE) bringing its effort to not less than $10,000,000. The funds for NDCEE should be used for, but not be limited to the following technology development initiatives: LICADO Coal Cleaning Demonstration; Assessment of Strategic Coal Reserves; Industrial Health Risk Assessments; Medical Waste Tracking Systems; Automated Plastics Sortation System Demonstration; Nitrogen Removal Red Water Destruction Demonstration System; Reclamation and Disposal Options for Used Torpedo Boilers; Biological Approaches to Remediation and Pollution Prevention; and a Phosphoric Acid Fuel Cell Demonstration.

Facility Environmental Management and Monitoring System (FEMMS): The Committee also recommends $4,500,000 only for an initial phase of the development of a Facility Environmental Management and Monitoring System (FEMMS) demonstration testbed program at Tobyhanna Army Depot for the integrated and comprehensive management and control of environmental issues at Army facilities. The program will be performed in conjunction with the National Defense Center for Environmental Excellence (NDCEE).

AIR RECONNAISSANCE LOW

The Committee transfers $7,760,000 as proposed by the House Armed Services Committee, from the DoD Counternarcotics program to the Army for the Air Reconnaissance Low Aircraft.

MILITARY ENGINEERING TECHNOLOGY (0602784A)

The Army requested $41,183,000 for Military Engineering Technology. The Committee recommends $41,933,000, an increase of $750,000 to the budget request.

Natural Gas Desiccant Cooling Technology: The Committee recommends $750,000 only for the Corps of Engineers Research Laboratory to conduct a demonstration of natural gas desiccant cooling technology under the Energy Technology Applied to Military Facilities Program. The Committee understands that operating cost reductions could be achieved by military installations using this new American technology, that this technology's capability for operating efficiently when bringing in outside air has particular application for improving air quality and reducing costs at laboratories, and that early production units are available for this demonstration. The results of this demonstration should be reported to the Committee by February 1, 1995.

LOGISTICS TECHNOLOGY (0602786A)

The Army requested $28,453,000 for Logistics Technology. The Committee recommends $32,953,000, an increase of $4,500,000 above the request.

Cold Pasteurization/Sterilization Techniques for Meals-Ready-to-Eat: The Committee recommends $2,000,000 only for the Army to continue its research on the establishment of cold pasteurization/sterilization techniques for meals-ready-to-eat. This research should be continued by the institutions that are currently working with these technologies as a result of last year's Defense Appropriations Act.

These funds should be directed to a program that has begun research in this area applying oscillating magnetic fields and electric field pulses to fresh or pretreated food products. For the development of prototypes, such a program should have access to research and pilot plant facilities that would allow for development from laboratory stage to a prototype. It should also have an instrumentation laboratory capable of making the specialized electronic and mechanical experimental apparatus needed for the program and specialized laboratories for evaluating physical and sensory properties.

Quality Quantification and Enhancement of Combat Rations: The Committee recommends $2,000,000 only to continue the Quality Quantification and Enhancement of Combat Rations program started last year.

Water Chiller/Heater Kits: The Committee recommends $500,000 only for the Army to develop diesel powered potable water chiller/heater kits for M149A2 Tank Trailers and XM1098 Water Tank semitrailers. This project will fulfill a need identified by United States forces during the Gulf War, and in Somalia, for a reliable chilled water delivery system. It will also improve support for troops deployed in cold climates as well as provide a means for heating Meals, Ready to Eat (MREs).

ADVANCED TECHNOLOGY DEVELOPMENT

LOGISTICS ADVANCED TECHNOLOGY (0603001A)

The Army requested $12,913,000 for Logistics Advanced Technology. The Committee recommends $14,913,000, an increase of $2,000,000 only for the future ammunition packaging technologies program.

Munitions Packaging: The Committee recommends $2,000,000 only to continue the program started last year to investigate future ammunition packaging technologies for all Services. The Committee expects the Army to develop a long term funded program to exploit more efficient ammunition packaging technologies. In addition, the Committee directs that $300,000 of the funds provided for this effort be used to pursue the Army's effort with industry providing government furnished equipment and raw materials to pursue injection-molded plastic technology development.

WEAPONS AND MUNITIONS ADVANCED TECHNOLOGY (0603004A)

The Army requested $17,291,000 for Weapons and Munitions Advanced Technology. The Committee recommends $30,791,000, an increase of $13,500,000 as follows: $7,500,000 only to continue the Army's lethality technology programs, such as KE precursor technology to defeat the future explosive reactive armor threat, Electrothermal-Chemical (ETC) technology for anti-armor applications, and Electromagnetic (EM) cannon caliber high energy density compact power supply development efforts; $5,000,000 only to continue the development of the XM–982 155mm Extended Range Artillery Projectile; and $1,000,000 only for the Army's Cannon Caliber Electro-Magnetic Launcher program for a total program of $2,500,000.

ELECTRONIC WARFARE TECHNOLOGY (0603270A)

The Army requested $28,533,000 for Electronic Warfare Technology. The Committee recommends $32,833,000, an increase of $4,300,000 only for the Stingray Advanced Technology Demonstration program and associated simulation efforts.

LINE-OF-SIGHT, ANTITANK (LOSAT) (0603654A)

Last year, the Congress directed that a robust technology demonstration strategy be pursued that has the potential to move the Line-of-Sight, Antitank (LOSAT) program into Engineering, Manufacturing and Development (EMD) in fiscal year 1996. The Committee is concerned that the Army has not requested any funding in fiscal year 1994 for this program even though several areas of concern must still be addressed, i.e., integration onto a standard Bradley chassis and design/fabrication of critical fire unit subsystems. Therefore, the Committee recommends $25,000,000 for LOSAT in fiscal year 1994 and encourages the Army to aggressively pursue LOSAT technology effort in order to reach EMD in fiscal year 1996.

ADVANCED TACTICAL COMPUTER SCIENCE AND TECHNOLOGY (0603772A)

The Army requested $30,946,000 for Advanced Tactical Computer Science and Technology. The Committee recommends $33,746,000, an increase of $2,800,000 only for the development and evaluation of Common Ground Station concepts, technologies, and prototypes for use with the JSTARS program.

Tactical Programs

ARMAMENT ENHANCEMENT INITIATIVE (0603639A)

In addition to the budget request, the Committee recommends an additional $21,400,000 only to continue concept exploration of the X–ROD program. Since X–ROD is an autonomous, guide-to-hit, horizontal attack munition used against maneuvering, exposed targets, the Committee believes that the Army should continue to pursue the technologies involved in both the guide-to-hit and propulsion systems.

ARTILLERY PROPELLANT DEVELOPMENT (0603640A)

The Army requested $12,033,000 for Artillery Propellant Development of Unicharge. The Committee fully supports the Army's efforts on Unicharge.

52 CALIBER, M109 SELF-PROPELLED HOWITZER SYSTEM

The Committee remains concerned about the need for a near term improvement to the existing M109 howitzer system and recommends an additional $18,700,000 only to initiate the development and operational testing required to type classify a XM 282 variant 52 caliber, 155mm unicharge cannon fitted with a semi-automatic loading system. The Committee directs the Army to integrate the armament system into an existing M109 self-propelled system as soon as practical.

Since there are plans to keep the M109 howitzers in the Army inventory indefinitely, the Committee believes this improvement program does not compete with the Advanced Field Artillery System and should be incorporated into a separate program element under the auspices of PEO Armaments.

ADVANCED TANK ARMAMENT SYSTEM (ATAS) (0603653A)

The Army requested $5,435,000 for continued development of the Advanced Tank Armament System (ATAS). Under this program, the Army is developing a new 120mm gun, and associated autoloader and fire control technologies, for the M1 series tank. The purpose of this program is to modernize the gun system and give it greater range. The Committee recommends denial of the entire amount and termination of the program.

The Army is just now fielding the first M1A2 tanks with state-of-the-art electronics and fire control capabilities. A major investment is being made in the upgrade of older M1 tanks to the A2 configuration. In addition, production is just beginning on a new tank round, costing about three times more than the round it replaces, which will give the M1A2 tank lethal capabilities against all known armor threats at comparable distances to ATAS.

The ATAS program will cost $164 million to complete and another $550–600 million for integration and testing. A comparable sum will procure almost 200 modernized and upgraded M1A2 tanks. The Committee believes that scare modernization resources should go to the M1A2 upgrade and associated ammunition programs rather than to ATAS. The Army seems to agree with the Committee that ATAS is a lower priority program since it budgeted

only $5.4 million of the $30.8 million required to continue this program in fiscal year 1994.

ARMY DATA DISTRIBUTION SYSTEM (0603713A)

The Army requested $11,757,000 for the Army Data Distribution System. As discussed under Other Procurement, Army, the Committee has included an increase of $8,000,000 in research and development costs associated with upgrades to the Army Enhanced Position Location Reporting System.

SINGLE CHANNEL GROUND AND AIRBORNE RADIO SYSTEM (0603746A)

The Army requested no funds to continue development of improvements to the Single Channel Ground and Airborne Radio System (SINCGARS). The Committee believes that the Army should continue the effort begun in fiscal year 1993 and has provided $10,000,000 for fiscal year 1994.

AVIATION—ADVANCED DEVELOPMENT (0603801A)

The Army requested $10,759,000 for Aviation Advanced development. The Committee recommends $16,259,000, an increase of $5,500,000 over the request. Of the amount recommended, not less than $10,446,000 shall be available only for Project DB45, Aviation Life Support Equipment, with the increased funding to be applied to the aircrew integrated ensemble ($3,700,000) and the aviation integrated common helmet ($1,800,000).

LOGISTICS AND ENGINEER EQUIPMENT—ADVANCED DEVELOPMENT (0603804A)

The Army requested $14,695,000 for Logistics and Engineer Equipment—Advanced Development. The Committee recommends $19,695,000, an increase of $5,000,000 above the request.

Laser Vibration Sensing System: The Committee recommends $5,000,000 only for research on bridge, overpass, and highway structural integrity assessments using laser vibration sensing technology. The research is to be conducted under the aegis of the Army's Belvoir RDT&E Center, Bridge Division, in addition to and complementing its ongoing work on the structural integrity of bridges, overpasses, and highways.

AIRCRAFT AVIONICS (0604201A)

The Army requested $5,061,000 for Aircraft Avionics. The Committee recommends $15,061,000, an increase of $10,000,000 above the budget request. The Committee recognizes the need to digitize the avionic systems of the Army's scout and attack helicopter fleet in order to horizontally integrate ground and aviation assets. Accordingly, the Committee recommends $10,000,000 to begin these upgrades. The Committee requests the Army to prioritize its requirements and to include its plan to utilize the $10,000,000 in the report on Horizontal Battlefield Integration. Outyear funding data should also be included.

RAH–66 COMANCHE HELICOPTER (0604223A)

The Army requested $367,080,000 for the RAH–66 Comanche Helicopter. The Committee fully supports this request and believes that it is an important modernization program for the synchronized and digitized battlefield of the future.

ELECTRONIC WARFARE DEVELOPMENT (0604270A)

The Army requested $60,453,000 for Electronic Warfare Development. The Committee recommends $84,953,000, an increase of $24,500,000, as follows:

TACJAM–A: The Committee recommends $22,500,000 for the development of the countermeasures transmitter (ECM) subsystem for TACJAM–A.

Advanced Tactical Radar Jammer (ATRJ): The Committee recommends $2,000,000 only for the performance of the testing necessary for use of the Graphite/PEI composite heatsinks in the ATRJ and other advanced electronics programs.

ALL SOURCE ANALYSIS SYSTEM (ASAS) (0604321A)

The Committee recommends $15,971,000 for the All Source Analysis System (ASAS), an increase of $15,000,000 to the budget request. Of the additional funds provided by the Committee, $6,000,000 is only for continuing the upgrade of the communications and intelligence capabilities of the Army's existing Single Source Processor—SIGINT (SSP–S) and continuing the development of a light-weight, portable equivalent for support of contingency operations and low intensity conflict activities.

HEAVY TACTICAL VEHICLES (0604622A)

The Army requested $476,000 for Heavy Tactical Vehicles. The Committee recommends $2,476,000, an increase of $2,000,000 only to expand the effort started last year to develop, fabricate, and test a series of Palletized Load System (PLS) flat racks necessary for engineering equipment and a Heavy Repair Vehicle which makes use of the PLS chassis.

ADVANCED COMMAND AND CONTROL VEHICLE (AC2V) (0604640A)

The Army requested $8,654,000 for the Advanced Command and Control Vehicle (AC2V). The Committee recommends $28,654,000, an increase of $20,000,000 above the budget request.

One of the lessons learned in Operation Desert Storm was that the M577A2 Command and Control Vehicle (CV2) could not maintain pace with the maneuver force and lacked mobility, reliability, and survivability. The AC2V is currently being developed with an estimated fielding date of fiscal year 1999. The Committee believes that this vehicle should be moved up to be more in line with the M1A2 program and the Army's Horizontal Battlefield Integration program. Accordingly, the Committee recommends additional funding to develop the final two pre-production prototype vehicles required for testing, complete brassboard testing, and accelerate the testing by one year.

Within the additional $20,000,000 funding provided, $2,000,000 shall be available only for integration of the vehicle intercom system and mission module.

ENGINEERING MOBILITY EQUIPMENT (0604649A)

The Army requested $13,304,000 for Engineering Mobility Equipment. The Committee recommends $16,404,000, an increase of $3,100,000 only for Heavy Assault Bridge program.

AUTOMATIC TEST EQUIPMENT DEVELOPMENT (0604746A)

The Army requested $14,472,000 for Automatic Test Equipment Development. The Committee recommends $23,472,000, an increase of $9,000,000 above the budget. The Committee directs that the additional funding provided for this program only be used to develop test program sets for the Apache Longbow and Kiowa Warrior.

TACTICAL ELECTRONIC SURVEILLANCE SYSTEM—ENGINEERING DEVELOPMENT (0604766A)

The Army has requested $52,547,000 for the Tactical Electronic Surveillance System. The Committee recommends $37,547,000, a reduction of $15,000,000. The Committee directs the Intelligence Systems Council to review and report Service requirements for mobile ELINT processing capabilities given recent plans to modernize SIGINT collection systems for submission with the fiscal year 1995 budget request.

BRILLIANT ANTIARMOR TECHNOLOGY (BAT) (0604768A)

The Army requested $117,008,000 for the Brilliant Antiarmor Technology (BAT) program. The Committee recommends $78,008,000, a reduction of $39,000,000 to the request.

Brilliant Antiarmor Technology (BAT) is an antiarmor, top attack submunition which uses an acoustic sensor to initially locate targets and an infrared seeker to guide the submunition to its target. The primary carrier, and only carrier currently approved for BAT, is the Tri-Service Standard Attack Missile (TSSAM) launched from the Multiple Launch Rocket System carrier. Several other Army, Navy, and Air Force carriers are being considered for the BAT improved warhead and seeker version.

According to Army testimony, the flyaway cost for a BAT submunition is $82,000. When you combine the cost of 44 BATs in one launcher load of TSSAM with the TSSAM missile cost, the cost reaches $6 million per shot. The Committee remains concerned that BAT, which currently is an acoustic and infrared submunition, could become too expensive given the current and future budget climate.

The General Accounting Office has reported that approximately $7 million has been budgeted for anticipated higher Command and Congressional adjustments and that $5 million for phase II studies of the product improved version will not be required until after the cost and operational effectiveness analysis has been submitted and approved.

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The Committee recommends that the Army, working with the other services, should re-evaluate the requirements for the improved BAT to determine if it is the most efficient and effective system for accomplishing its mission. Also, the Army should determine how BAT can be utilized on other carriers, which should, in turn, bring down its cost. Since the Committee has recommended the termination of the Tri-Service Standard Attack Missile (TSSAM) program, it is imperative that the Army identify additional carriers for BAT. Once they are identified, the Army will need to restudy and restructure the BAT program.

The reduction recommended by the Committee includes the $7 million for potential adjustments, the $5 million for phase II studies, and other efficiencies to be realized by making the restructured BAT program more cost and operationally effective.

AVIATION—ENGINEERING DEVELOPMENT (0604801A)

The Army requested $5,733,000 for Aviation—Engineering Development. The Committee recommends $11,033,000, an increase of $5,300,000 to the budget request.

Aviation Life Support System: The Army requested $5,733,000 for Aviation Life Support System. The Committee recommends $9,033,000, an increase of $3,300,000 over the request which shall be applied only to the aircrew integrated helmet system P3I and microclimatic cooling systom projects within Project DC45.

Army Aircraft Concurrent Engineering Test and Evaluation Center: The Committee recommends $2,000,000 only for a study to establish the requirements for an Army Aircraft Concurrent Engineering, Test and Evaluation Center. The study should fulfill the intent of Public Law 100–456, which mandates that the Secretary of Defense ensure that all suppliers of critical aircraft and ship parts meet or exceed the Original Equipment Manufactured (OEM) qualification requirements. The study should include a determination of facility requirements, the need for relocation of existing testing equipment, personnel requirements, available concurrent engineering expertise, the requirements for new test equipment and the evaluation of the benefits of consolidation of the Army Aircraft concurrent engineering and test support activities in a centralized location. The Army should submit the results of this study to the Committee on Appropriations by February 1, 1994.

WEAPONS AND MUNITIONS—ENGINEERING DEVELOPMENT (0604802A)

The Army requested $15,365,000 for Weapons and Munitions—Engineering Development. The Committee recommends $30,365,000, an increase of $15,000,000 to the request.

Advanced Rocket System: The Committee recommends $10,000,000 only for the Army's portion of the joint Advanced Rocket System (ARS) program. These funds are for Army product development and platform integration of items such as the flechette and unitary warheads, and lightweight launchers for rotary-winged aircraft.

120mm Mortar: The Committee recommends an addition of $5,000,000 only for development of an 120mm mortar training round.

Bunker Defeat Munition: Last year, the Committee appropriated funds to complete the competitive evaluation testing of non-developmental weapon systems to select a system which could best meet the Army's requirements for a Bunker Defeat Munition. The Committee is pleased to learn that contracts have been awarded and candidate weapon systems will be available for testing in early fiscal year 1994. The Committee wishes to express its appreciation for the expeditious manner in which the Army is conducting this program. Accordingly, the Committee recommends $6,303,000, the fiscal year 1994 budget request, only for the Bunker Defeat Munition.

LOGISTICS AND ENGINEER EQUIPMENT—ENGINEERING DEVELOPMENT (0604804A)

The Army requested $29,372,000 for Logistics and Engineer Equipment—Engineering Development. The Committee recommends $25,552,000, a decrease of $3,820,000 to the Marine Oriented Logistical Equipment Engineering Development Program.

Logistics Over the Shore (LOTS) Mission: For over a decade the Committee received testimony from the Army, based on studies and field testing, that the most efficient and productive way to accomplish its logistics over the shore (LOTS) mission was with air cushion vehicles. As a result, the Committee appropriated millions for the development of a heavy lift air cushion vehicle and then the Army abruptly cancelled its development on the eve of a contract award. In 1991, the Committee provided additional funding to the Army to identify an affordable near term alternative. The Army developed a LACV–30 air cushion prototype upgrade program to meet this requirement and within days of contract award cancelled this program. In view of the Army's inability to sustain a consistent and comprehensive LOTS mission, the Committee recommends a reduction of $3,820,000 against the Army's request for LARC 60 and enhanced causeway programs. The Committee directs that no funding be provided by the Army of any other logistics over the shore (LOTS) missions until the previously identified low cost LACV–30 upgrade prototype program has been re-evaluated and the Army submits a report to the Committee on its logistics over the shore requirements wherever the Army may be deployed.

RADAR DEVELOPMENT (0604820A)

The Army requested $25,834,000 for FAAD–GBS research and development. The Committee recommends no research and development funds. Further details are provided in the C^{3}I Section of this report.

COMBAT VEHICLE IMPROVEMENT PROGRAM (0203735A)

The Army requested $69,972,000 for the Combat Vehicle Improvement Program. The Committee recommends $137,572,000, an increase of $67,600,000 over the request.

Bradley Fighting Vehicle Upgrade: The Army requested $45,964,000 to initiate the development of the A3 model Bradley and phase 1 of the core electronics and inter-vehicular information system. The Committee supports this effort which will make Bradely modernization compatible with the M1A2 upgrade program

and recommends an additional $33,000,000 only to accelerate this effort.

M1 Abrams Tank Upgrade: The Army requested $12,605,000 for the Abrams Block Improvement Program. The Committee recommends an additional $34,600,000, as follows:

$14,600,000 to further support the Initial Operational Test and Evaluation (OT&E) efforts and an accelerated Milestone III decision; and

$20,000,000 to upgrade the electronic data processing, storage, and retrieval system of the M1A2 to take advantage of the investment by the Kingdom of Saudi Arabia in new technology providing increased digital processing which simultaneously accommodates multilingual displays.

Recovery Vehicle: The Army requested $11,403,000 for the Recovery Vehicle Improvement Program. The Committee recommends the budgeted amount. Since this program is essential for the recovery of damaged heavy combat vehicles on the battlefield, the Committee expects the Army to reach a Milestone III decision in fiscal year 1994.

MISSILE/AIR DEFENSE PRODUCT IMPROVEMENT PROGRAM (0203801A)

The Army requested $59,782,000 for the Missile/Air Defense Production Improvement Programs. The Committee recommends $68,782,000, an increase of $9,000,000 only for the Army to conduct live fire tests utilizing the AH–64 Apache as the test platform to evaluate near term, low cost, off-the-shelf, high velocity missiles for air-to-air requirements. This evaluation shall be conducted as an adjunct to the live fire evaluations of complementary missiles which the Army intends to conduct utilizing the Avenger system. The evaluation will be limited to those candidates which by utilizing the same design can provide the Army improved ground and airborne air defense capabilities as a complement to the Stinger and Air-to-Air Stinger missile.

OTHER MISSILE PRODUCT IMPROVEMENT PROGRAM (0203802A)

The Army requested $66,438,000 for the Other Missile Product Improvement Program. The Committee recommends $72,438,000, an increase of $6,000,000 to the request.

Insensitive Rocket Motors: The Committee recommends $4,000,000 only for the Army to evaluate insensitive rocket motors currently in the munitions industrial base to see if any can be brought into production in the near term. These funds are to qualify an insensitive rocket motor for the current Hellfire missile as opposed to a more expensive development program for an insensitive motor.

Hellfire Training Round: The Committee recommends $2,000,000 only for the Army to continue its ongoing demonstration/proof of concept program to develop a low-cost Hellfire laser-guided training round.

Intelligence and Communications

SATCOM GROUND ENVIRONMENT (0303142A)

The Army requested $153,931,000 for SATCOM Ground Environment. The Committee recommends $122,633,000, a reduction of $31,298,000. The adjustment is based upon a reluctance to modernize the Defense Satellite Communications System (DSCS) pending completion of a comprehensive master plan of the entire DOD satellite communications system.

Defensewide Mission Support

DOD HIGH ENERGY LASER SYSTEMS TEST FACILITY (0605605A)

The Army requested $4,808,000 for the DOD High Energy Laser System Test Facility (HELSTF). The Committee recommends $26,608,000, an increase of $21,800,000 above the budget request. These funds are to be used only for the continued operation of HELSTF, including $10,000,000 only for the Sea Lite Beam Director. These funds are not to be used for any studies to curtail the operation and maintenance of HELSTF, to begin shutdown procedures of the high energy laser system, or to initiate reduction-in-force of civilian personnel during fiscal year 1994. Any reduction in funding, not matter how small, must be submitted via a prior approval reprogramming request on a DD Form 1415.

The Committee is adamant that HELSTF be fully operational during fiscal year 1994. Any future proposal of the Army to reduce or curtail activities at HELSTF shall only be made along with a budget submission so that Congress has the opportunity to consider the request.

PROGRAMWIDE ACTIVITIES (0605801A)

The Army requested $96,011,000 for Programwide Activities. The Committee recommends $103,011,000, an increase of $7,000,000 only for the Medical Diagnostic Imaging Support (MDIS) System tele-imaging project in the Puget Sound Area. Under this initiative, Madigan Army Medical Center will provide MDIS tele-imaging support for DoD and other federal medical treatment facilities in the Puget Sound area.

MUNITIONS STANDARDIZATION, EFFECTIVENESS AND SAFETY (0605805A)

The Army requested $13,763,000 for Munitions Standardization, Effectiveness and Safety. The Committee recommends $23,991,000, an increase of $10,228,000 to the request.

Ammunition Demilitarization: The budget includes $712,000 for research on the demilitarization of conventional ammunition. Testimony at the Procurement of Ammunition, Army hearing revealed that a "fully funded" research program in fiscal year 1994 would be $5,000,000. The Committee believes that a vigorous research program in this area is necessary as environmental restrictions on open burning/open detonation increase. There are several promising technologies which offer the opportunity for "clean" demilitarization and even recycling. The Committee, therefore, rec-

ommends an increase of $4,228,000 for a total program of demilitarization research of $5,000,000.

Plasma Centrifugal Furnace: The Committee is aware that the Army has demonstrated the effectiveness and practicability of plasma arc technology in the demilitarization of pyrotechnic ordnance and the destruction and vitrification of hazardous material. Therefore, the Committee recommends $6,000,000 only to continue development of the plasma centrifugal furnace for the future utilization of plasma arc technology in large scale demilitarization and hazardous material destruction.

MANUFACTURING TECHNOLOGY DEVELOPMENT (0708011A)

Funding for the Army's Manufacturing Technology Development was transferred to the RDT&E Defense-wide account in fiscal year 1994. The Committee recommends $75,000,000 for Manufacturing Technology Development. These funds include $20,000,000 only for the National Defense Center for Environmental Excellence (NDCEE); $10,000,000 only to investigate composite manufacturing technologies; $8,500,000 only for the Instrumented Factory for Gears (INFAC) program; $2,000,000 only to continue the effort to introduce advanced powder metallurgy disks into the growth T800 engine of the Comanche development program; and $2,000,000 only to link Army Centers of Excellence with the National Institute of Standards and Technology (NIST) manufacturing technology programs. The balance of the funding shall be used for Army programs which were included in the RDT&E Defense-wide appropriation request for fiscal year 1994 budget request.

National Defense Center for Environmental Excellence (NDCEE): The funding provided for NDCEE should be used to continue the five-year effort established in accordance with the Defense Appropriations Act, 1993. Not more than two percent of the funding provided NDCEE may be used for U.S. Government management and administrative expenses.

The establishment and operation of the NDCEE is a vital part of the overall environmental strategy within the DOD including the Tri-Service Environmental Quality Strategic Plan. The NDCEE is the focal point for several on-going DOD efforts which lead and support DOD facilities in adopting a comprehensive approach to pollution prevention.

The Committee believes that the mission of NDCEE is in agreement with the President's Executive Order 12856, dated August 3, 1993, on Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements. Therefore, the Committee requests the Department of Defense to utilize the NDCEE to develop DOD's pollution prevention strategies in response to the President's Executive Order.

The contract to establish and operate the NDCEE specifically allows for the use of the NDCEE by industry, associations, other DOD services and agencies, and other Government agencies for efforts to be separately negotiated and funded. Accordingly, the Committee encourages the DOD to provide the capabilities of the NDCEE to other Government agencies to expedite their response to the President's Executive Order.

PROGRAM SUMMARY

The following schedule shows the budget estimate, the recommended appropriation, and the change from the budget estimate for fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
RESEARCH DEVEOPMENT TEST & EVAL ARMY			
TECHNOLOGY BASE			
IN-HOUSE LABORATORY INDEPENDENT RESEARCH	10,954	10,954	---
DEFENSE RESEARCH SCIENCES	203,695	188,945	-14,750
ELECTROMECHANICS AND HYPERVELOCITY PHYSICS	3,712	8,712	+5,000
TRACTOR ROSE	5,720	5,720	---
MATERIALS TECHNOLOGY	11,288	11,288	---
ELECTRONIC SURVIVABILITY AND FUZING TECHNOLOGY	28,793	36,793	+8,000
TRACTOR HIP	11,921	11,921	---
AVIATION TECHNOLOGY	34,150	36,650	+2,500
EW TECHNOLOGY	20,962	20,962	---
MISSILE TECHNOLOGY	23,777	23,777	---
LASER WEAPONS TECHNOLOGY	510	5,510	+5,000
MODELING AND SIMULATION	---	10,000	+10,000
COMBAT VEHICLE AND AUTOMOTIVE TECHNOLOGY	38,994	54,494	+15,500
BALLISTICS TECHNOLOGY	29,547	29,547	---
CHEMICAL, SMOKE AND EQUIPMENT DEFEATING TECHNOLOGY	37,766	51,985	+14,219
JOINT SERVICE SMALL ARMS PROGRAM	3,397	3,397	---
WEAPONS AND MUNITIONS TECHNOLOGY	34,794	38,794	+4,000
ELECTRONICS AND ELECTRONIC DEVICES	19,400	27,400	+8,000
NIGHT VISION TECHNOLOGY	18,941	18,941	---
HUMAN FACTORS ENGINEERING TECHNOLOGY	15,163	15,163	---
ENVIRONMENTAL QUALITY TECHNOLOGY	21,229	68,729	+47,500
NON-SYSTEM TRAINING DEVICE TECHNOLOGY	4,413	4,413	---
COMMAND, CONTROL, COMMUNICATIONS TECHNOLOGY	10,376	10,376	---
AIRBORNE RECONNAISSANCE LOW (ARL)	---	7,760	+7,760
COMPUTER AND SOFTWARE TECHNOLOGY	5,743	5,743	---
MILITARY ENGINEERING TECHNOLOGY	41,183	41,933	+750
MANPOWER/PERSONNEL/TRAINING TECHNOLOGY	13,319	13,319	---
LOGISTICS TECHNOLOGY	28,453	32,953	+4,500
MEDICAL TECHNOLOGY	86,711	87,461	+750
TRACTOR FLOP	1,562	1,562	---
ARMY ARTIFICIAL INTELLIGENCE TECHNOLOGY	2,696	2,696	---
SMALL BUSINESS INNOVATIVE RESEARCH/SMALL BUS TECH TRAN	63,044	66,514	+3,470
TOTAL, TECHNOLOGY BASE	832,213	954,412	+122,199
ADVANCE TECHNOLOGY DEVELOPMENT			
LOGISTICS ADVANCED TECHNOLOGY	12,913	14,913	+2,000
MEDICAL ADVANCED TECHNOLOGY	40,346	112,996	+72,650
AVIATION ADVANCED TECHNOLOGY	53,073	53,073	---
WEAPONS AND MUNITIONS ADVANCED TECHNOLOGY	17,291	30,791	+13,500
COMBAT VEHICLE AND AUTOMOTIVE ADVANCED TECHNOLOGY	39,093	39,093	---
COMMAND, CONTROL, COMMUNICATIONS ADVANCED TECHNOLOGY	16,049	16,049	---
MANPOWER, PERSONNEL AND TRAINING ADVANCED TECHNOLOGY	8,064	8,064	---
TRACTOR HIKE	7,355	7,355	---
TRACTOR HOLE	11,779	11,779	---
TRACTOR DIRT	1,888	1,888	---
TRACTOR RED	7,629	7,629	---
TRACTOR ROSE	6,679	6,679	---
ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) RESEARCH	3,410	33,410	+30,000
GLOBAL SURVEILLANCE/AIR DEFENSE/PRECISION STRIKE TECHN	29,484	29,484	---
EW TECHNOLOGY	28,533	32,833	+4,300
MISSILE AND ROCKET ADVANCED TECHNOLOGY	46,497	35,997	-10,500
TRACTOR CAGE	13,909	10,371	-3,538
LANDMINE WARFARE AND BARRIER ADVANCED TECHNOLOGY	9,995	9,995	---
JOINT SERVICE SMALL ARMS PROGRAM	5,529	7,529	+2,000
LINE-OF-SIGHT, ANTITANK (LOSAT)	---	25,000	+25,000
NIGHT VISION ADVANCED TECHNOLOGY	38,661	38,661	---
MILITARY ENGINEERING ADVANCED TECHNOLOGY	2,910	2,910	---
CHEMICAL BIOLOGICAL DEFENSE AND SMOKE ADVANCED TECHNOL	2,634	2,634	---
ADVANCED TACTICAL COMPUTER SCIENCE AND TECHNOLOGY	30,946	33,746	+2,800
TOTAL, ADVANCE TECHNOLOGY DEVELOPMENT	434,667	572,879	+138,212
STRATEGIC PROGRAMS			
CLASSIFIED PROGRAMS	8,647	8,647	---
TOTAL, STRATEGIC PROGRAMS	8,647	8,647	---
TACTICAL PROGRAMS			
TRACTOR DUMP	19,010	19,010	---
NUCLEAR MUNITIONS - ADV DEV	2,006	2,006	---
NON-LINE OF SIGHT (N-LOS)	34,702	---	-34,702
LANDMINE WARFARE AND BARRIER - ADV DEV	21,685	21,685	---
SMOKE, OBSCURANT AND TARGET DEFEATING SYS-ADV DEV	6,046	6,046	---
ARTILLERY PROPELLANT DEVELOPMENT	12,033	12,033	---
52 CALIBER, M109 HOWITZER SYSTEM	---	18,700	+18,700
ARMORED SYSTEM MODERNIZATION - ADV DEV	148,342	148,342	---
TRACTOR DIRT	265	265	---
ENGINEER MOBILITY EQUIPMENT ADVANCED DEVELOPMENT	29,464	29,464	---
ADVANCED TANK ARMAMENT SYSTEM (ATAS)	5,435	---	-5,435
ARMY DATA DISTRIBUTION SYSTEM	11,757	19,757	+8,000
TACTICAL SURVEILLANCE SYSTEM - ADV DEV	15,422	12,422	-3,000
TACTICAL ELECTRONIC SUPPORT SYSTEMS - ADV DEV	4,363	4,363	---
SINGLE CHANNEL GROUND AND AIRBORNE RADIO SYSTEM (SINCG	---	10,000	+10,000

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
SOLDIER SUPPORT AND SURVIVABILITY	13,193	13,193	---
TACTICAL ELECTRONIC SURVEILLANCE SYSTEM - ADV DEV	15,373	10,373	-5,000
NIGHT VISION SYSTEMS ADVANCED DEVELOPMENT	4,794	4,794	---
MLRS PRODUCT IMPROVEMENT PROGRAM	40,915	40,915	---
AVIATION - ADV DEV	10,759	16,259	+5,500
WEAPONS AND MUNITIONS - ADV DEV	764	764	---
LOGISTICS AND ENGINEER EQUIPMENT - ADV DEV	14,695	19,695	+5,000
COMBAT SERVICE SUPPORT COMPUTER SYSTEM EVALUATION AND.	20,502	20,502	---
NBC DEFENSE SYSTEM-ADV DEV	32,163	40,944	+8,781
MEDICAL SYSTEMS - ADV DEV	27,628	27,628	---
AIRCRAFT AVIONICS	5,061	15,061	+10,000
COMANCHE	367,080	367,080	---
EW DEVELOPMENT	60,453	84,953	+24,500
TRI-SERVICE STANDOFF ATTACK MISSILE	89,682	---	-89,682
ALL SOURCE ANALYSIS SYSTEM	971	15,971	+15,000
MEDIUM TACTICAL VEHICLES	6,548	6,548	---
SMOKE, OBSCURANT AND TARGET DEFEATING SYS-ENG DEV	17,118	17,118	---
JAVELIN	44,937	44,937	---
LANDMINE WARFARE	21,322	21,322	---
HEAVY TACTICAL VEHICLES	476	2,476	+2,000
AIR TRAFFIC CONTROL	5,607	5,607	---
ADVANCED COMMAND AND CONTROL VEHICLE (AC2V)	8,654	28,654	+20,000
LIGHT TACTICAL WHEELED VEHICLES	2,064	---	-2,064
ARMORED SYSTEMS MODERNIZATION (ASM)-ENG. DEV	89,504	89,504	---
ENGINEER MOBILITY EQUIPMENT DEVELOPMENT	13,304	16,404	+3,100
NIGHT VISION SYSTEMS - ENG DEV	41,827	41,827	---
COMBAT FEEDING, CLOTHING, AND EQUIPMENT	28,425	28,425	---
NON-SYSTEM TRAINING DEVICES - ENG DEV	62,669	52,669	-10,000
INTEGRATED METEOROLOGICAL SUPPORT SYSTEM	949	949	---
TACTICAL SURVEILLANCE SYSTEM - ENG DEV	38,815	38,815	---
AIR DEFENSE COMMAND, CONTROL AND INTELLIGENCE - ENG DE	15,424	15,424	---
AUTOMATIC TEST EQUIPMENT DEVELOPMENT	14,472	23,472	+9,000
TACTICAL ELECTRONIC SURVEILLANCE SYSTEM - ENG DEV	52,547	37,547	-15,000
TRACTOR BAT	117,008	78,008	-39,000
JOINT SURVEILLANCE/TARGET ATTACK RADAR SYSTEM	26,260	26,260	---
COMBINED ARMS TACTICAL TRAINER (CATT)	52,988	52,988	---
AVIATION - ENG DEV	5,733	11,033	+5,300
WEAPONS AND MUNITIONS - ENG DEV	15,365	30,365	+15,000
LOGISTICS AND ENGINEER EQUIPMENT - ENG DEV	29,372	25,552	-3,820
COMMAND, CONTROL, COMMUNICATIONS SYSTEMS - ENG DEV	9,244	9,244	---
NBC DEFENSE SYSTEM-ENG DEV	42,898	42,898	---
MEDICAL MATERIEL/MEDICAL BIOLOGICAL DEFENSE EQUIPMENT.	21,128	21,128	---
LANDMINE WARFARE/BARRIER - ENG DEV	2,957	2,957	---
SENSE AND DESTROY ARMAMENT MISSILE - ENG DEV	41,011	98,672	+57,661
LONGBOW - ENG DEV	277,954	277,954	---
NON-COOPERATIVE TARGET RECOGNITION - ENG DEV	34,547	46,547	+12,000
ARMY TACTICAL COMMAND & CONTROL SYSTEMS (ATCCS) ENG DE	37,227	37,227	---
RADAR DEVELOPMENT	25,834	---	-25,834
ADV FIELD ARTILLERY TACTICAL DATA SYSTEM	46,285	46,285	---
COMBAT VEHICLE IMPROVEMENT PROGRAMS	69,972	137,572	+67,600
HORIZONTAL BATTLEFIELD INTEGRATION	---	25,000	+25,000
MANEUVER CONTROL SYSTEM	29,702	29,702	---
AIRCRAFT MODIFICATIONS/PRODUCT IMPROVEMENT PROGRAMS	19,410	19,410	---
AIRCRAFT ENGINE COMPONENT IMPROVEMENT PROGRAM	6,567	6,567	---
MISSILE/AIR DEFENSE PRODUCT IMPROVEMENT PROGRAM	59,782	68,782	+9,000
OTHER MISSILE PRODUCT IMPROVEMENT PROGRAMS	66,438	72,438	+6,000
TRACTOR RIG	8,314	8,314	---
TRACTOR CARD	7,615	7,615	---
JOINT TACTICAL COMMUNICATIONS PROGRAM (TRI-TAC)	16,529	16,529	---
CLASSIFIED PROGRAMS	41,294	62,694	+21,400
TOTAL, TACTICAL PROGRAMS	2,590,659	2,715,664	+125,005
INTELLIGENCE & COMMUNICATIONS			
TERRAIN INFORMATION - ENG DEV	9,929	9,929	---
POSITIONING SYSTEMS DEVELOPMENT	4,921	4,921	---
INFORMATION SYSTEMS SECURITY PROGRAM	7,122	7,122	---
SATCOM GROUND ENVIRONMENT	153,931	122,633	-31,298
CLASSIFIED PROGRAMS	8,658	8,658	---
TOTAL, INTELLIGENCE & COMMUNICATIONS	184,561	153,263	-31,298
DEFENSEWIDE MISSION SUPPORT			
THREAT SIMULATOR DEVELOPMENT	18,233	18,233	---
TARGET SYSTEMS DEVELOPMENT	18,945	18,945	---
MAJOR T&E INVESTMENT	28,893	28,893	---
RAND ARROYO CENTER	15,492	15,492	---
ARMY KWAJALEIN ATOLL	171,380	171,380	---
ARMY TEST RANGES AND FACILITIES	145,415	145,415	---
ARMY TECHNICAL TEST INSTRUMENTATION AND TARGETS	25,540	25,540	---
SURVIVABILITY/LETHALITY ANALYSIS	33,179	33,179	---
DOD HIGH ENERGY LASER TEST FACILITY	4,808	26,608	+21,800
METEOROLOGICAL SUPPORT TO RDT&E ACTIVITIES	17,970	17,970	---
MATERIEL SYSTEMS ANALYSIS	19,500	19,500	---
EXPLOITATION OF FOREIGN ITEMS	18,779	18,779	---
JTCB POC, TEST/ASSESS, SMOKE ASSESS, NBC SERV	7,404	7,404	---
SUPPORT OF OPERATIONAL TESTING	58,433	58,433	---
PROGRAMWIDE ACTIVITIES	96,011	103,011	+7,000
INTERNATIONAL COOPERATIVE RESEARCH AND DEVELOPMENT	1,861	1,861	---
TECHNICAL INFORMATION ACTIVITIES	12,007	12,007	---

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
MUNITIONS STANDARDIZATION, EFFECTIVENESS AND SAFETY...	13,763	23,991	+10,228
RDT&E SUPPORT FOR NONDEVELOPMENTAL ITEMS..............	5,881	5,881	---
ENVIRONMENTAL COMPLIANCE..............................	44,014	48,014	+4,000
MINOR CONSTRUCTION (RPM) - RDT&E......................	1,873	1,873	---
MAINTENANCE AND REPAIR (RPM) - RDT&E..................	61,448	61,448	---
BASE OPERATIONS - RDT&E...............................	274,409	274,409	---
MANAGEMENT HEADQUARTERS (RESEARCH AND DEVELOPMENT)....	11,951	11,951	---
MANUFACTURING TECHNOLOGY DEVELOPMENT..................	---	75,000	+75,000
GENERAL REDUCTION, OVERHEAD...........................	---	-70,000	-70,000
CONTRACT ADMINISTRATION/AUDIT.........................	92,012	---	-92,012
TOTAL, DEFENSEWIDE MISSION SUPPORT..................	1,199,201	1,155,217	-43,984
TOTAL, RESEARCH DEVEOPMENT TEST & EVAL ARMY.........	5,249,948	5,560,082	+310,134

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

Appropriations, 1993 .... $8,930,381,000
New obligational authority, 1994:
Estimate 9,215,604,000
Recommended 8,604,777,000
Decrease 610,827,000

This appropriation funds the Research, Development, Test and Evaluation activities of the Department of the Navy and the Marine Corps.

COMMITTEE RECOMMENDATIONS

AUTHORIZATION CHANGES

The Committee recommends the following changes in accordance with authorization action:

[In thousands of dollars]

	Request	HASC	HAC	Change
Defense Research Sciences	416,922	428,422	428,422	+11,500
Undersea Surveillance Weapon Technology	107,960	108,960	108,960	+1,000
Manpower, Personnel, and Training Advanced Technology Development (IMAT project)	18,652	22,452	22,452	+3,800
Advanced Anti-Submarine Warfare Technology	49,172	68,172	68,172	+19,000
Ship Combat Survivability	17,315	14,588	14,588	−2,727
Retract Juniper	32,560	22,560	22,560	−10,000
A/F–X Aircraft	399,218	0	0	−399,218
Airborne Mine Countermeasures	33,155	43,155	43,155	+10,000
F–14 Upgrade	71,995	149,995	149,995	+78,000
Marine Corps TENCAP	1,314	4,314	4,314	+3,000

NAVAL SEA SYSTEMS COMMAND

During its review of Navy programs this year, the Committee discovered a number of irregularities with programs managed by the Naval Sea Systems Command. Problems include abuse of the new start reprogramming procedures, misuse of change order allowances in the shipbuilding accounts to perform development activities, and questionable management of a certain special access program and the SLQ–32 electronic warfare system described below. The Committee expects the Assistant Secretary of the Navy for Research, Development, and Acquisition to ensure that the Naval Sea System Command has sufficient management capability and knowledge of required procedures in place to avoid these problems recurring in the future.

NAVY COMPUTERS FOR WEAPON SYSTEMS

The Navy has been the slowest of the Services to recognize the opportunities available from the ongoing revolution of computer and software technology. In an era when the number of ships will be reduced dramatically, the value of each individual ship as a warfighting asset is greatly increased. The smaller number of ships in the Navy fleet will still have to cover the same geographic area, but they will have to deal with more complex problems in shorter reaction times. They will be operating in littoral environments which are more complicated due to clutter from land masses and civilian aircraft, and shallow water submarine threats for which

current anti-submarine assets are not optimized. Advanced sensors and computers/software to process their output are what will be required for the Navy to successfully adapt to its changing environment. To reduce costs in an era of declining budgets, and in particular to lower its manpower costs, the Navy must find effective computer/software substitutions for scarce manpower and equipment. In short, now is the time for the Navy to embrace the Information Age.

Many of the deficiencies experienced by the Navy in Operation Desert Storm involve ineffective application of computer technology. Many of the opportunities to improve the effectiveness of Navy operations involve computers and their software. Examples include mission planning, target recognition, ballistic missile defense, cooperative engagement, ship defense, sensor fusion, and counter-stealth applications. The Navy in particular has not done a good job of automating administrative functions like logistics and manpower management as an integral part of a computer architecture built into the design of its ships when constructed, which explains the slow pace at which its "paperless ship" and CALS objectives are likely to be attained. The Committee also wonders about the efficacy of having the navy shipbuilding community dominate computer architecture and acquisition for its ships, rather than having an organization whose core competence is advanced computer technology and its application. The Combat Information Center conversion project managed by the Naval Sea Systems Command is a good example of a bad example: early 1980 vintage computers will not be installed on the last ships until the late 1990s. Few if any corporations would manage their computer assets in this manner, and the Committee sees no reason to accept such mediocrity from the Navy. The Navy also needs to stop developing high cost, military unique computers, displays, and processors which it buys in low quantities in a sole source manner.

The Navy made a key first step when it reorganized its Pentagon Staff and developed its "From the Sea" strategy. The Committee commends the Navy for these very positive actions. However, the next step which must be taken is to develop and implement an aggressive computer/software strategy for its warfighting assets, to include aircraft, ships and shore activities. It should focus on upgrades to the assets currently in inventory rather than on new construction ships to be delivered in small numbers after the turn of the century.

The Advanced Research Projects Agency is perhaps the leader in the Federal government for the development and application of modern computer technology. The Committee believes the Navy should consult with ARPA to develop a computer organization, architecture, and acquisition strategy which maximizes reliance on one of the nation's strongest assets, its commercial computer industry. The Committee directs the Secretary of the Navy to submit a report to the Congressional defense committees by June 1, 1994 which demonstrates that it has an effective strategy, architecture, organization, and acquisition plan to maximize the effectiveness of the computer resources for Navy platforms.

SLQ-32

The Committee is very disappointed with the Navy's management of the SLQ-32 electronic warfare system. The Naval audit service and the General Accounting Office have recently reported on SLQ-32, a $1.7 billion program. The auditors describe a B-1 bomber type of situation in terms of system performance, and an A-12 type of situation in terms of the Navy's disclosure of problems. SLQ-32 was modified over 4,200 times at a cost of over $300 million, yet continues to perform poorly. GAO feels that SLQ-32 reduces, rather than increases, protection to Navy ships. The Navy apparently lost configuration control of every unit in the fleet, according to the GAO. Some production equipment sits in warehouses because it is unfit for use at sea. Yet, the Navy continues to buy units which fleet commanders have found to be unsatisfactory. The Committee directs that the Undersecretary of Defense (Acquisition) report to the Congressional defense committees by June 1, 1994 on the status of SLQ-32 development and production programs and how management deficiencies disclosed by recent Naval Audit Service and General Accounting Office reports have been resolved.

TACTICAL DISPLAYS

The Committee is pleased with the Navy's expeditious action with respect to the adaptation, integration, and installation of the RNDES display suite to be evaluated in shipboard C3I applications. The $15,000,000 appropriated in fiscal year 1992 has been made available to support this evaluation. The Committee recognizes that the shipboard evaluation on the U.S.S. Clark (FFG-11) will provide valuable test data in a stressful shipboard environment. The Committee commends the acting Assistant Secretary of the Navy for Research, Development, and Acquisition for his personal attention to and successful resolution of this important issue.

Last year Congress appropriated $23,700,000 in the C3 Advanced Technology program which was made available only to competitively acquire a ruggedized workstation which supports the replacement of the Navy Tactical Data System/Advanced Combat Direction System consoles, as well as satisfies the needs of the ship self defense program. The Committee strongly endorses taking maximum advantage of commercial off-the-shelf technology and requiring the use of open systems standards to ensure lower acquisition and future support costs. The application of non-developmental items is also supported by the Committee except where military specific or proprietary designs would preclude fair and open competition. The Committee has discovered that the Naval Sea Systems Command has withdrawn the OJ-663 display functionality from the statement of work required under the Advanced Display System, and has simultaneously implemented a Display Simplification Program using Aegis development funds. These two actions in tandem imply that the Agegis community desires to withdraw from the competitive Advanced Display System acquisition, which would significantly weaken the ADS acquisition and be fundamentally unacceptable to the Committee. The Committee therefore recommends bill language which limits the Display Simplification initiative to the goals stated by the Navy to the Committee, namely

that the Aegis program be allowed to develop a limited number of displays to meet ship construction schedules pending delivery of Advanced Display Systems.

TECHNOLOGY BASE

SURFACE/AEROSPACE SURVEILLANCE AND WEAPONS TECHNOLOGY (0602111N)

The Navy requested $67,305,000 for surface/aerospace surveillance and weapons technology. The Committee recommends $92,305,000, an increase of $25,000,000.

For the past several years, the Committee has annually deleted independent efforts by both the Navy and the Air Force to develop wide area surveillance systems. The Committee has included a reduction of $5,000,000 specifically to the Wide Area Surveillance Subprogram. No Portion of this reduction is to be allocated to any other subproject of this program element.

The Committee also recommends increases of $25,000,000 only for the free electron laser and $5,000,000 only for the Polar Ozone Aerosol Monitor.

SURFACE SHIP TECHNOLOGY (0602121N)

The Navy requested $17,495,000 for surface ship technology. The Committee recommends $38,795,000, an increase of $21,300,000. This includes $3,300,000 only for the design of standardized shock-hardened air circuit breakers; $3,000,000 only for interactive electronic technical manual development at the Navy Electronic Systems Engineering Activity (NESEA) at St. Inigoes, Maryland; and $15,000,000 only for the use of composite technology in ship applications. Concerning the latter, the Committee wishes to continue this effort begun by Congress last year and accelerate it to assure that this technology is available to reduce ship signatures and improve corrosion resistance. Hull structure application as well as outfitting concepts are to be explored. Emphasis should be placed on low cost epoxy pre-impregnated technology so that advanced matrix chemistry will be utilized.

The Interactive Electronic Technical Manual (IETM)/Optical Technology Project is one of the Navy's flagship CALS initiatives, which has been deployed on five Aegis ships. IETM improves capability and achieves weight and cost reductions for operating forces by reducing reliance on bulky, complex technical manuals and by streamlining access to information from multiple sources for efficient problem solving. Last year Congress funded expansion of this IETM technology by the Navy Electronics Systems Engineering Activity (NESEA) at St. Inigoes, Maryland to other applications. This year, the Committee recommends the following initiatives at St. Inigoes to continue the demonstration of this technology for achieving improved capability and roducing weight and cost: $1,000,000 only for the creation of standardized procedures for the acquisition of IETM, which will serve as guidelines for systems acquisition managers; $1,000,000 only for application of multimedia technology to storage, presentation, and maintenance of C4I architecture information, particularly as it relates to large, diverse commands; and

$1,000,000 only for application of IETM technology to training materials for the Marine Corps Communication Electronics School.

MISSION SUPPORT TECHNOLOGY (0602233N)

The Navy requested $34,424,000 for mission support technology. The Committee recommends $48,224,000, an increase of $13,800,000. Within the amount provided, $5,600,000 is only for projects associated with aircrew protection. An additional $1,000,000 is only for development and physiological testing of microencapsulated phase change materials for use in extreme temperature protective clothing. Concerning aircrew protection, $3,666,000 is only for project M33I330 and $1,935,000 is only for project RM33B31.

MATERIALS ELECTRONICS, AND COMPUTER TECHNOLOGY (0602234N)

The Navy requested $71,063,000 for materials, electronics, and computer technology. The Committee recommends $72,563,000, an increase of $1,500,000 which is only to continue development and operation of the Distributed Manufacturing Demonstration Project.

UNDERSEA SURVEILLANCE WEAPON TECHNOLOGY (0602314N)

The Navy requested $107,960,000 for undersea surveillance weapen technology. The Committee recommends $108,960,000, an increase of $1,000,000 for battery research as recommended by the House Armed Services Committee in its 1994 bill. The Committee directs that the traditional leadership roles and level of participation by universities and industry in this program element should be maintained.

MINE COUNTERMEASURES, MINING, AND SPECIAL WARFARE TECHNOLOGY (0602315N)

The Navy requested $21,944,000 for mine countermeasures, mining, and special warfare technology. The Committee recommends $23,944,000, an increase of $2,000,000 only for the Rapid Airborne Mine Clearance System.

OCEANOGRAPHIC AND ATMOSPHERIC TECHNOLOGY (0602435N)

The Navy requested $37,711,000 for oceanographic and atmospheric technology. The Committee recommends $47,511,000, an increase of $9,800,000 only for the development and application of a cost-effective remote semi-autonomous underwater oceanographic and environmental measurement capability. This is to be accomplished through the development of cost-effective environmental measurement sensors, with remotely operated transport and/or commercial applications. This increase to the budget request is for collaborative research with academic institutions for the development of basic oceanographic measurements, data acquisition technologies, and system design. After a decade of progress in the field, the prospects are now being realized for developing semi-autonomous underwater sensing and delivery systems with sufficient range, sensing capability and power to support large-scale ocean science measurements and monitoring tasks in both continental shelf and near shore environments. From a national defense view-

point, such capabilities will support the conduct of mine countermeasure operations through collection of detailed underwater information for large areas of shallow water coastal regions in potentially hostile waters.

NAVAL BIODYNAMICS LABORATORY

The Committee has provided an additional $3,000,000 only for the Naval Biodynamics Laboratory (NBDL) and related collaborative research between NBDL and the Advanced Marine Technology Center. Of this additional amount, $2,000,000 is in the aviation survivability program (0603216N) and $1,000,000 is in the Medical development program (0603706N). The Committee directs the Navy to add $2,500,000 of the increase to the Navy's budget request for operations and research at the NBDL. The remaining $500,000 is to continue the collaborative research effort between the NBDL and the Advanced Marine Technology Center only as described and funded in the conference report (102–1015) to H.R. 5504, the fiscal year 1993 DOD Appropriations Act. The Committee is adamant that the direction provided in the House and conference reports last year regarding this collaborative research effort be followed and that funding for the NBDL in fiscal year 1994 be used to maintain current research efforts and for previously proposed or new efforts in aviation survivability, biomedical, human factors, impact, ship motion, and technology development research.

ADVANCED TECHNOLOGY DEVELOPMENT

AIR SYSTEMS ADVANCED TECHNOLOGY DEVELOPMENT (0603217N)

The Navy requested $30,005,000 for air systems advanced technology development. The Committee recommends $80,005,000, an increase of $50,000,000. Within that amount, $12,500,000 is only for continued development of the advanced Anti-Radiation Guided Missile; $15,500,000 is only for a new project in Shared Aperture/ Common Radio Frequency Modular Systems; $13,000,000 is only for open architecture efforts in project W0446; and $9,000,000 is only for development of integrated avionics racks using microencapsulated phase change materials. The statement of managers (House report 102–1015) accompanying the Defense Appropriations Act for fiscal year 1993 (Public Law 102–369) provided $10,077,000 for integrated system advanced development and related activity for an Advanced Anti-Radiation Guided Missile capability that has evolved from a small business innovative research program to meet an unfunded Marine Corps requirement. Although the requirement continues to be unmet, the Department of Defense has not released the funds to the Marine Corps for this development. The Committee directs the Secretary of Defense to proceed with this development program with those and the additional funds mentioned above. The Committee also encourages the Secretary of the Navy to fund the fiscal year 1995 requirement for this project. Navy's internal activities on this project should be limited to test and evaluation only. The AARGM program is to be funded and managed independently from the Navy's ongoing ERASE program.

GLOBAL SURVEILLANCE/AIR DEFENSE/PRECISION STRIKE TECHNOLOGY (0603238N)

The Navy requested $50,999,000 for global surveillance, air defense, precision strike technology. The Committee recommends $30,000,000, a reduction of $20,999,000 due to fiscal constraints.

UNDERSEA SUPERIORITY TECHNOLOGY DEMONSTRATION (0603555N)

The Navy requested $95,438,000 for undersea superiority technology demonstration. The Committee recommends $70,000,000, a reduction of $25,438,000 due to fiscal constraints.

SHIP CONCEPT ADVANCED DESIGN (0603563N)

The Navy requested $18,820,000 for ship concept advanced design. The Committee recommends $8,700,000, a reduction of $10,120,000 to deny funds to initiate design of a new destroyer called DD–21. The Committee notes that written justification for this initiative recently provided to the Committee indicates that DD–21 would not be fielded until at least the year 2015. However, the major rationale is to replace the FFG–7 ship which the Navy states "is severely deficient in quick reaction anti-air warfare, especially anti-ship missile defense, required for littoral operations." This is a good example of the institutional problem in the Navy which has caused the Committee to react so negatively on the topic of ship self defense. The Committee is unwilling to wait 22 years for the Navy to provide adequate self-defense capability to its ships. The solution to the anti-ship cruise missile problem is not to build a new class of ships, but rather to quickly upgrade the ones that are at risk today. As described in the ship self-defense portion of this report, the Committee has had to provide many funding additions to basic ship self defense programs which the Navy's budgeting system neglected. The funds requested for DD–21 have been applied to these higher priorities instead. The Committee also notes that this is the fourth consecutive year that the Committee has had to significantly increase funds for the classified OUTLAW BANDIT program which meets a critical fleet warfighting requirement. Funds requested for DD-21 are denied with prejudice.

MARINE CORPS ADVANCED TECHNOLOGY DEMONSTRATION (0603640M)

The Navy requested $35,815,000 for Marine Corps advanced technology demonstration. The Committee recommends $27,587,000, a net reduction of $8,228,000. The net reduction denies $6,799,000 for development of a Marine Corps expeditionary vehicle. The Committee has consolidated funding for such development and evaluation in a single OSD line elsewhere in the bill. In addition, the recommendation denies $3,229,000 for development and demonstration of alternative engines and propulsion systems for future amphibious vehicles. The Committee believes that such activities should be conducted with available funds in the Advanced Amphibious Assault Vehicle program. The reduction is offset in part by an increase of $1,800,000 for the Short Range Antitank Weapon (SRAW).

Last year the conferees expressed encouragement with the SRAW program progress and success. The conferees also expressed

belief that an alternative general purpose warhead could be developed to extend the SRAW capability beyond the basic anti-tank version, and encouraged the Army and Marine Corps to cooperate on such an effort by sharing warhead technology to develop an alternative general purpose warhead for the SRAW. The Committee believes that the present warhead technology projects including the Bunker Defeat Munition (BDM), and the Multi-purpose Individual Munition (MPIM) will not provide a suitable general purpose warhead for SRAW in a timely manner. The SRAW general purpose warhead should be able to defeat fortifications such as earthen bunkers, buildings and trenches with higher volumetric lethality than possible with any of the technologies under development.

The Committee, therefore, recommends that an additional $1.8 million be provided for the development of a fortification penetrating warhead that exploits existing high impulse thermal explosives and runway cratering munitions in the development effort.

MEDICAL DEVELOPMENT (0603706N)

The Navy requested $16,956,000 for medical development. The Committee recommends $60,148,000, an increase of $43,192,000 as explained in the Medical section of this report.

GENERIC LOGISTICS RESEARCH AND DEVELOPMENT TECHNOLOGY DEMONSTRATION (0603712N)

The Navy requested $13,720,000 for generic logistics research and development technology demonstration. The Committee recommends $38,520,000, an increase of $24,800,000 only for the following activities of Logistics Engineering Advanced Development: enhance printed circuit board digital data packages through improved character handling and recognition techniques; automate the creation of "intelligent" printed wiring board CALS files; enhance printed wiring board digital data packages through automated bill of materials entry; integrate printed circuit board functional testing data into a CALS-compliant reverse engineering program; develop a system to automate the quality assurance and digital technical data packages; provide CALS enhancement of the virtual business and manufacturing environment; and for the Aviation Supply Office, reduce system/subsystem repair and acquisition cost analysis.

ADVANCED ANTI-SUBMARINE WARFARE TECHNOLOGY (0603747N)

The Navy requested $49,172,000 for advanced anti-submarine warfare technology. The Committee recommends $68,172,000, an increase of $19,000,000 as recommended by the House Armed Services Committee in its 1994 bill, of which $4,000,000 is only for extended echo ranging and $15,000,000 is only for low-low frequency active technology. Within the latter amount, $5,000,000 is only for acoustic projectors.

ADVANCED TECHNOLOGY TRANSITION (0603792N)

The Navy requested $63,394,000 for advanced technology transition. The Committee recommends $40,000,000, a reduction of $23,394,000 due to fiscal constraints. Within that amount,

$4,500,000 in only for the terminal placement of undersea weapons in shallow water project and $5,000,000 is only to allow the open ocean demonstration of magnetohydrodynamic drive to proceed.

STRATEGIC PROGRAMS

TACTICAL SPACE OPERATIONS (0603451N)

The Navy requested $2,018,000 for Tactical Space Operations to improve tactical surveillance in ocean areas and related coastal zones where U.S. Naval forces may be employed. The Committee has deleted the entire request based upon the lack of a firm requirement for the specific systems being proposed.

NAVY STRATEGIC COMMUNICATIONS (0101402N)

The Navy requested $36,184,000 for Strategic Communications. The Committee recommends $26,184,000, a reduction of $10,000,000. The Committee included this reduction because the Navy considers this such a low priority program that $23 million of the $42 million provided in fiscal year 1993 by the Congress was diverted to other purposes.

TACTICAL PROGRAMS

FIBER OPTIC ACOUSTIC SENSOR SYSTEMS

The Committee believes that the cost of towed and hull-mounted arrays for use in anti-submarine warfare could be lowered considerably through the use of fiber optic components. Fiber optic acoustic sensor systems have been successfully demonstrated under several programs. Such systems also have potential non-military applications. Since in most sonar systems the wet-end is the cost driver, the implementation of fiber optic acoustic sensor systems could save the Navy many millions of dollars over just a few years. The Committee therefore recommends $10,000,000 only to continue technology efforts in this area with the objective of further reducing the cost of wide-aperture arrays; developing common optical towed arrays for surface ships and submarines and undertaking a manufacturing technology program for efficient transition of fiber optic acoustic sensor systems from development into production. The increase has been provided in the following programs:

Manufacturing Technology	+$3,000,000
Submarine Combat Systems	+$4,000,000
Integrated Surveillance Systems.	+$3,000,000

The Committee expects future Navy RDT&E budgets to request the funds required to continue this important effort.

AVIATION SURVIVABILITY (0603216N)

The Navy requested $13,672,000 for aviation survivability. The Committee recommends $23,072,000, an increase of $9,400,000. Of the increase, $2,000,000 is only for the Naval Biodynamics Laboratory as previously discussed in this section and $7,400,000 is only for aircrew systems technology. The Committee directs that the Navy fund all activities as budgeted, and that a total of $11,518,000 is available only for Project W0584, Aircrew Systems

Technology. The $7,400,000 increase is only for the following purposes: aircrew integrated life support system (+$4,700,000), aircrew integrated ensemble (+$1,200,000), and the advanced helmet vision system (+$1,500,000).

TACTICAL AIRBORNE RECONNAISSANCE (0603261N)

The Navy requested $30,358,000 for Tactical Airborne Reconnaissance. The Committee recommends $3,141,000. The Committee recommends $27,217,000 be transferred to the Office of the Secretary of Defense. Details are addressed in the C³I section of this report.

UNDERSEA WARFARE AND MCM DEVELOPMENT (0603502N)

The Navy requested $65,660,000 for undersea warfare and mine countermeasure development. The Committee recommends $50,000,000, a reduction of $15,660,000 due to fiscal constraints.

ADVANCED SUBMARINE COMBAT SYSTEMS DEVELOPMENT (0603504N)

The Navy requested $20,341,000 for advanced submarine combat systems development. The Committee recommends $23,341,000, an increase of $3,000,000. $4,000,000 is only for fiber optic acoustic sensor systems as described earlier in this report.

CENTURION SUBMARINE

The Committee fully funded the Navy's request for funds to develop the Centurion next generation attack submarine. Additional language is contained in the Submarine Industrial Base section of this report.

NON-ACOUSTIC ANTI-SUBMARINE WARFARE (0603528N)

The Navy requested $13,999,000 for non-acoustic anti-submarine warfare. The Committee recommends that these funds be transferred to the joint service account funded in Defense-wide RDT&E.

ADVANCED SUBMARINE SYSTEM DEVELOPMENT (0603561N)

The Navy requested $142,068,000 for advanced submarine system development. The Committee recommends the requested level. Within this amount, $17,000,000 is only for development of dry deck shelters for the SSN–688 class submarines.

ADVANCED SURFACE MACHINERY SYSTEM (0603573N)

The Navy requested $92,328,000 for advanced surface machinery systems to develop next generation power distribution and generation for surface ships. The Committee recommends the requested level. Within this amount, $7,500,000 is only for development of a permanent magnet motor.

MARINE CORPS ASSAULT VEHICLES (0603611M)

The Navy requested $20,554,000 for Marine Corps Assault Vehicles. The Committee recommends $28,554,000, an increase of $8,000,000, as proposed in House authorization legislation to continue work on the Stratified Charge Rotary Engine.

MARINE CORPS GROUND COMBAT/SUPPORT SYSTEM (0603635M)

The Navy requested $27,624,000 for Marine Corps Ground Combat/Support System. The Committee recommends $21,570,000, a reduction of $6,054,000. The reduction transfers funds budgeted for NBC advanced development to the Army research account as proposed by authorization legislation.

SHIP SELF DEFENSE (0603755N)

The Navy requested $237,204,000 for ship self defense. The Committee recommends $341,904,000, an increase of $104,700,000. Within the increase, $20,000,000 is only for demonstration of an airship which the House Armed Services Committee authorized in the RDT&E, Defense-wide appropriation; $25,000,000 is only for E-2/E-3 aircraft integration of cooperative engagement capability as recommended by the House Armed Services Committee in its 1994 bill; an additional $20,000,000 is only to cover shortfalls in cooperative engagement capability as recommended by the House Armed Services Committee in its 1994 bill; a net reduction of $1,000,000 is explained in a classified letter accompanying this report; an additional $6,000,000 only for cooperative engagement multi-function self aligned gate technology; $3,000,000 is only for continued development and qualification of the Enhanced Lethality Cartridge 20mm CIWS ammunition; $3,000,000 is only to test excess B-52G aircraft ECM systems on a Navy minesweeper; $11,000,000 is only for Quick Reaction Combat Capability; $3,800,000 is only for the Naval Electronic Systems Engineering Activity multi-sensor data fusion program; $8,900,000 is only for sealift/tanker ship protection; and $5,000,000 is only for a prompt test and evaluation of a 25mm or 30mm stabilized, rapid fire gun mount with associated fire control system, aboard a front line combatant.

The Committee recommends $3,800,000 only for the Naval Electronic Systems Engineering Activity (NESEA) at St. Inigoes, Maryland to continue developing a multi-sensor data fusion capability for the Ship Self Defense System (SSDS). The Committee understands that full in-house capability has been established for simulating, testing, and evaluating prototypes, and that future milestones include live ID track initiation into SSDS, Wallops Island testing with complete SSDS, and live shipboard testing. Timely fielding of an effective system is the fundamental goal of the Committee, which is therefore especially pleased with the progress being made to identify and combine additional sensors and to field a prototype unit for testing in a class of non-Aegis ships. These efforts have resulted in a significant improvement in meeting required fielding dates and broadening the program's capabilities. The Defense Base Closure and Realignment Commission made several recommendations regarding NESEA programs and activities. The Committee is concerned that those programs and activities remaining at St. Inigoes preserve the unique organizational capabilities to achieve the level of success characterized by the SSDS effort, and the C4I for the Warrior and IETM programs discussed elsewhere in this report. The Committee, therefore, directs the Navy to submit its specific plans for implementing the Defense

Base closure and Realignment Commission directives to the Committees on Appropriations prior to their implementation.

Concerning the gun evaluation, in the littoral warfare operational environment, it is expected that combination attacks involving enemy surface to surface missiles, air launched sea skimming missiles, and small fast patrol boats will occur. Combination attacks could subject our ships and crews to the threat of major damage and loss of lives. The Committee supports the Navy's program to develop a modification to the Phalanx close-in weapon system to allow it to defend against surface as well as air attacks. However, the Committee remains concerned that in littoral warfare most ships must remain in "condition one"—ready for missile defense—at all times. In order that the Phalanx weapon system be able to maintain its primary mission as a last ditch ship antimissile defense on a full time basis, the Committee directs that $5,000,000 be made available only for a prompt test and evaluation on an Aegis cruiser of an off-the-shelf 25mm or 30mm gun (such as the Bushmaster II used on a Bradley fighting vehicle, an M–230 used on Apache helicopters, a GAU–13 used on tactical aircraft, or any other) with a stabilized, rapid fire gun mount and an off-the-shelf mast mounted fire control system such as those deployed during the Persian Gulf conflict.

GUN WEAPON SYSTEM TECHNOLOGY (0603795N)

The Navy requested $17,247,000 for gun weapon system technology. The Committee recommends $38,247,000, an increase of $21,000,000 of which $2,000,000 is only for electric gun technology, $8,500,000 is only for electro-thermal gun development, and $10,500,000 is only for the advanced gun weapons system project at the Naval Surface Warfare Center, Crane Division.

AV–8B ENGINEERING DEVELOPMENT (0604214N)

The Navy requested $18,284,000 for AV–8B engineering development. The Committee recommends $19,784,000, an increase of $1,500,000 only for the adaptation and integration of the launcher rail chaff dispenser on the aircraft.

P–3 MODERNIZATION (0604221N)

The Navy requested $15,134,000 for P–3 modernization. The Committee recommends $21,634,000, an increase of $6,500,000 only for a detailed engineering, manufacturing, and cost analysis study to determine the feasibility of initiating a P–3 airframe conversion program.

AIR CREW SYSTEMS DEVELOPMENT (0604264N)

The Navy requested $11,126,000 for air crew systems development. The Committee recommends $14,976,000, an increase of $3,850,000 only the following items: $3,100,000 for AILSS/Navy Combat Edge and $750,000 for the advanced helmet vision system.

EW DEVELOPMENT (0604270N)

The Navy requested $128,850,000 for electronic warfare equipment development. The Committee recommends $100,000,000, a

decrease of $28,850,000 due to fiscal restraints. Within the amount provided, $3,000,000 is only for the additional project recommended by the House Armed Services Committee in its 1994 bill.

AEGIS COMBAT SYSTEM ENGINEERING (0604307N)

The Navy requested $103,995,000 for Aegis combat system engineering which the Committee recommends. Within the amount provided, $5,000,000 is only for the LM–2500R turbine engine as recommended by the House Armed Services Committee in its 1994 bill, and $18,000,000 is only for development of the aeroderivative gas turbine engine for naval applications such as destroyers.

TRI-SERVICE STANDOFF ATTACK MISSILE (0604312N)

The Navy requested $75,430,000 for the tri-service standoff attack missile. The Committee recommends that these funds be denied, as explained earlier in this report.

SUBMARINE TACTICAL WARFARE SYSTEM (0604562N)

The Navy requested $25,427,000 for submarine tactical warfare system development. The Committee recommends $34,427,000, an increase of $9,000,000 only to initiate a competition for a common ring laser gyro navigation system for submarines and surface ships.

The Committee is aware that the current navigation system used on both U.S. submarines and surface ships is over twenty years old, is extremely unreliable, experiences a high failure rate, and is costly to maintain. Further, a Navy study has revealed that an expedited replacement of the current submarine navigation system could save $300 million during the useful life of the attack submarine fleet alone. The Committee understands that the Navy currently plans to procure an untested ring laser gyro system for surface ships only on a sole source basis. The Committee is very concerned with the Navy's plans to proceed with a sole source contract of a yet untested surface ship system; this approach is contrary to standard Department of Defense procurement practices. Accordingly, the Committee has included bill language to preclude the Navy from spending any funds on a sole source contract for ring laser gyro shipboard navigation systems. The Committee further recognizes the need for the Navy to reduce surface ship and submarine operating costs by upgrading current navigation systems with a non-developmental common ring laser gyro system. In order to take full advantage of a common system, the Committee recommends an additional $9,000,000 only to conduct a full and open competition to competitively procure a common ring laser gyro system not only for surface ships, but also for new and existing submarines.

SHIP CONTRACT DESIGN/LIVE FIRE T&E (0604567N)

The Navy requested $47,137,000 for ship contract design live fire test and evaluation. The Committee recommends $37,137,000, a reduction of $10,000,000 due to fiscal constraints. Included in the Navy's request is $23,400,000 for design of a new amphibious assault ship called L–X. The Committee is very disappointed at Navy

testimony this year that "these ships are not currently programmed to be part of a cooperative engagement net", which means that these high-value assets will not have sufficient capability to defend themselves from attack by advanced anti-ship cruise missiles. This conflicts with Congressional direction concerning the priority to be afforded to Navy ships for fielding cooperative engagement and other self defense capabilities, and defies common sense. Rather than terminate the L–X, the Committee has instead included bill language which precludes design of a ship which cannot defend itself properly due to its inability to communicate with and otherwise take advantage of the nation's multi-billion dollar investment in cooperative engagement capability.

NAVY TACTICAL COMPUTER RESOURCES (0604574N)

The Navy requested $17,572,000 for tactical computer resources. The Committee recommends $22,572,000, an increase of $5,000,000 only for the AN/UYH–16 optical device.

SPACE AND ELECTRONIC WARFARE ARCHITECTURE/ENGINEERING SUPPORT (0604707N)

The Navy requested $11,916,000 for architecture and engineering support to Space and Electronic Warfare. Based upon the enormous program growth over the fiscal year 1993 level of $2,715,000, the Committee recommends a reduction of $5,000,000 and a funding level of $6,916,000 for fiscal year 1994.

SHIP SELF DEFENSE (0604755N)

The Navy requested $116,760,000 for ship self defense. The Committee recommends $118,860,000, an increase of $2,100,000. An increase of $9,200,000 is recommended to accelerate development of the SPQ–9I radar, and an additional $3,000,000 is for the Thermal Imaging Sensor. A reduction of $10,100,000 for upgrades to SLQ–32 is also recommended.

NAVIGATION/ID SYSTEM (0604777N)

The Navy requested $80,047,000 for navigation/ID systems. The Committee recommends $83,047,000, an increase of $3,000,000 for noncooperative target recognition.

SEW SURVEILLANCE/RECONNAISSANCE SUPPORT (0605867N)

The Navy requested $17,863,000 for this program, a significant increase over the fiscal year 1993 appropriation of $11,032,000. A reduction of $6,180,000 is recommended.

E–2 SQUADRONS (0204152N)

The Navy requested $48,930,000 for computer upgrades to the E–2 aircraft. The Committee recognizes that upgrades to the E–2 computer are long overdue and sorely needed. However, an upgrade program which does not address cooperative engagement and other ship self-defense needs of the fleet is fundamentally flawed. The Committee notes that after two years of internal debate between its air and surface communities, the Navy has yet to formulate a coherent plan to field airborne cooperative engagement. The

Committee directs one more time that the cooperative engagement capability achieve IOC by 1996, to include an integrated airborne capability. The Committee has included bill language which precludes obligation of E-2 RDT&E funds until the Undersecretary of Defense for Acquisition submits a plan to Congress to achieve the airborne cooperative engagement goal.

CONSOLIDATED TRAINING SYSTEMS DEVELOPMENT (0204571N)

The Navy requested $37,200,000 for consolidated training systems development. The Committee recommends $46,200,000, an increase of $9,000,000 only for the OUTBOARD trainer.

F-14 UPGRADE (0205667N)

The Navy requested $71,995,000 for F-14 upgrades. The Committee recommends $149,995,000, an increase of $78,000,000 as recommended by the House Armed Services Committee in its 1994 bill. Within this amount $25,000,000 is for the pre-deployment upgrade and $53,000,000 is only for the F/A-14 configuration of the aircraft.

The Navy's budget proposed development of a "block 1" configuration of the aircraft which does not provide the entire F-14 fleet with new engines or any of its F-14 fleet with a multi-mission, all-weather precision strike capability. The Navy has begun to retire the A-6 all-weather, medium attack bomber from the inventory. This Committee and both Armed Services Committees have recommended termination of the A/F-X aircraft which had been intended to replace the A-6. The Committee is concerned that, in view of the continuing turmoil surrounding the future of tactical aviation, these actions will leave the Navy with a greatly diminished power projection capability. The Committee therefore has provided increased funds to initiate development of a single configuration F/A-14 multi-mission, all-weather precision strike aircraft which should capitalize on the F-14D investment made to date. The Committee believes that the Navy needs at least a core fleet of F/A-14 aircraft with all-weather capability, perhaps to include F-110 engines, enhanced software for the APG-71 radar, a fully implemented 1553/1760 digital data bus architecture, and new survivability and vulnerability enhancements as explained in a classified letter accompanying this report. The F/A-14 development should allow the addition of modular increments of capability in rapid, low-risk fashion which will incorporate current and future smart, standoff munitions.

The Committee directs that new F-14 upgrade programs be predicated on the strategy of the utmost reliance on industry to meet the Navy's requirements and the minimization of involvement of Navy in-house activities to perform functions for which industry is capable. In particular, none of these or prior year funds are available for the government to prototype F-14 aircraft in-house or to perform major component upgrades in-house without the prior approval of the Congressional defense committees.

The Committee fully supports the Navy's plan to continue development of the F/A-18E/F aircraft and does not view its support of F/A-14 upgrades as described above to in any way diminish the need for or pace of development of the new model F-18.

MARINE CORPS GROUND COMBAT/SUPPORTING ARMS SYSTEMS (0206623M)

The Navy requested $24,259,000 for Marine Corps ground combat/supporting arms systems. The Committee recommends $17,615,000, a reduction of $6,644,000. The reduction eliminates funding for evaluation of the Light Armored Vehicle as an armored personnel carrier (–$2,706,000). Since the Marine Corps has been unable to afford procurement of two other LAV variants which have been developed, it makes little sense to develop yet another variant for which funds are not available for procurement. The recommendation also funds two programs at the 1993 level: ground weaponry product improvement (–$2,799,000) and soldier/marine enhancement program (–$1,139,000).

MARINE CORPS COMBAT SERVICES SUPPORT (0206624M)

The Navy requested $9,656,000 for Marine Corps combat services support. The Committee recommends $595,000, a reduction of $9,061,000. The recommendation denies funding of $2,458,000 for source selection and evaluation/testing of a "light strike vehicle". The Committee has consolidated funding for such evaluations in a single OSD line elsewhere in the bill. In addition, the recommendation includes a reduction of $6,603,000 for the medium tactical vehicle replacement program. The $500,000 remaining for this program will permit continued Marine Corps participation in Department of Defense tactical wheeled vehicle programs.

MARINE CORPS COMMAND/CONTROL/COMMUNICATIONS (0206626M)

The Navy requested $36,735,000 for Marine Corps command/control/communications systems. The Committee recommends $46,735,000, an increase of $10,000,000 for the TPS–59 low radar cross section capability program. The increase will accelerate hardware deliveries, test simulators, communications subsystem and test planning and limit the present schedule slip to 6 months.

INTELLIGENCE AND COMMUNICATIONS

SPACE AND ELECTRONIC WARFARE SUPPORT (0605866N)

The Navy requested $5,819,000 for Space and Electronic Warfare Support. The Committee recommends $4,319,000, a reduction of $1,500,000 to slow the funding growth for studies for command, control, communications, computers, and intelligence requirements.

DEFENSE-WIDE MISSION SUPPORT

TECHNICAL INFORMATION SERVICES (0605804N)

The Navy requested $10,273,000 for technical information services. The Committee recommends $14,773,000, an increase of $4,500,000 only for the Advanced Technical Information Support project.

LONG-RANGE PLANNING SUPPORT (0605873M)

The Navy requested $14,374,000 for Marine Corps long-range planning support. The Committee recommends $3,000,000, a reduc-

tion of $11,374,000. Testimony indicated that the recommended level is the expected amount of annual funding in future years.

DEFENSE METEOROLOGICAL SATELLITE PROGRAM (0305160N)

The Navy requested $11,550,000 for the Defense Meteorological Satellite Program. The Committee has provided $666,000 of the request for the Joint Service use program. The remaining $10,884,000 has been deleted as discussed under Space and Related Programs elsewhere in this report.

TEST AND EVALUATION SUPPORT (0605864N)

The Navy requested $293,422,000 for test and evaluation support, which the Committee recommends. Within this amount, $1,000,000 is only to continue the ongoing HIDDENSEE project in support of test and evaluation programs and fleet training exercises to provide technical knowledge of advanced communications and control systems.

MANUFACTURING TECHNOLOGY DEVELOPMENT

The Committee recommends $205,000,000 for manufacturing technology. Within that amount, $7,000,000 is only for multifunction self-aligned gate technology; $10,000,000 is only for the National Shipbuilding Initiative as recommended by the House Armed Services Committee in its 1994 bill; $40,000,000 is only for the National Center for Excellence in Metalworking Technology; $8,000,000 is only for the Life Cycle Improvements through Networking Critical (LINC) manufacturing technologies program; $11,000,000 is only for the National Center for Advanced Gear Manufacturing Technologies; $2,000,000 is only for laser assisted manufacturing; $2,500,000 is only for spray forming research; $13,500,000 is only for the Surface Engineering and Material Characterization Facility managed by the Navy's Laser Joining Center; $8,000,000 is only for the Center of Excellence in Ship Hull Designs and Electrical Systems; $8,200,000 is only for the EA-6B Prowler upgrade; $18,000,000 is only for the cast ductile iron program; $5,000,000 is only to link Navy Centers of Excellence with the National Institute of Standards and Technology; $27,900,000 is only for the Great Lakes Composites Consortium; $500,000 is only for taconite process technology; $3,000,000 is only for fiberoptic acoustic sensor systems; $12,000,000 is only for the Electronic Manufacturing Productivity Facility; $9,500,000 is only for Joint Logistics Systems Command Rapid Acquisition of Manufactured Parts migrations; $2,000,000 is only for the Navy fleet-of-the-future program; $5,000,000 is only for a manufacturing producibility center at the Louisville, Kentucky site of the Naval Surface Warfare Center, Crane Division; $4,000,000 is only for the Center of Excellence for Best Manufacturing Practices; $3,000,000 is only to continue operation of the Joining Center; $750,000 is only for electro-optics manufacturing; and $3,000,000 is only for the Center of Excellence for Energetic Materials Manufacturing at the Naval Surface Warfare Center, Indian Head, Maryland. The Committee directs that the 1994 level of effort for the National Center for Excellence in Metalworking Technology be continued in the fiscal year

1995 budget request to Congress. The Committee has included bill language requiring that the Navy manage this program at a headquarters rather than a subordinate command level due to the magnitude of funding provided and the importance of these projects to the Navy and the nation.

Concerning electro-optics manufacturing, the Committee is aware of requirements within the Navy in the area of electro-optics manufacturing. A new generation of displays, targeting devices, FLIR detectors, and fiber optics is scheduled for insertion in weapon systems over the next five to ten years. Many of these technologies will provide valuable benefits to commercial industry in the areas of computers, consumer electronics, and transportation. Accordingly, the Navy Manufacturing Technology Program is directed to develop a technology thrust in electro-optics manufacturing, with emphasis on dual use technology deployment. The Committee directs the Secretary of the Navy to submit a strategic plan for execution of this thrust to the Appropriations Committees of Congress by February 1, 1994 which details execution methods, technical plans, schedules, and budget requirements. The Committee has provided an additional $750,000 for the purpose of developing the plan and for fiscal year 1994 effort.

The Navy is directed to use $18,000,000 of this appropriation to fund the continued R&D and transition to production of all of the ongoing ductile cast iron 5 inch 54 (i.e., HE, Hi Frag and Cargo) and 76mm projectile programs. The program plan for the transition to production will take into account not only production cost reductions through using ductile castings but also increases in weapon lethality. In line with the Reinventing Government initiative, the production contractor will be an integral member of the working team accomplishing this transition study/plan and upon plan completion, the Navy will present the plan to the Appropriations Committees of Congress. Also, the Navy will continue the development of the Automatic Finishing Machine for the projectiles, develop a lost foam manufacturing process for the above projectiles, develop a ductile iron casting process for 500 LB and 1000 LB bomb bodies and continue the testing and qualification of all of the cast ductile iron projectiles. To prevent duplication and insure maximum use of available data, the current Navy program office at Dahlgren will continue to manage all of these tasks.

PROGRAM SUMMARY

The following schedule shows the budget estimate, the recommended appropriation, and the change from the budget estimate for fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
RESEARCH DEVEOPMENT TEST & EVAL NAVY			
TECHNOLOGY BASE			
IN-HOUSE INDEPENDENT LABORATORY RESEARCH	16,985	16,985	---
DEFENSE RESEARCH SCIENCES	416,922	428,422	+11,500
SURFACE/AEROSPACE SURVEILLANCE AND WEAPONS TECHNOLOGY	67,305	92,305	+25,000
SURFACE SHIP TECHNOLOGY	17,495	38,795	+21,300
AIRCRAFT TECHNOLOGY	21,253	21,253	---
MARINE CORPS LANDING FORCE TECHNOLOGY	17,225	17,225	---
COMMAND, CONTROL, AND COMMUNICATIONS TECHNOLOGY	18,155	18,155	---
MISSION SUPPORT TECHNOLOGY	34,424	48,224	+13,800
MATERIALS, ELECTRONICS AND COMPUTER TECHNOLOGY	71,063	72,563	+1,500
ELECTRONIC WARFARE TECHNOLOGY	14,898	14,898	---
UNDERSEA SURVEILLANCE WEAPON TECHNOLOGY	107,960	108,960	+1,000
MINE COUNTERMEASURES, MINING AND SPECIAL WARFARE TECHN	21,944	23,944	+2,000
SUBMARINE TECHNOLOGY	14,575	14,575	---
OCEANOGRAPHIC AND ATMOSPHERIC TECHNOLOGY	37,711	47,511	+9,800
SMALL BUSINESS INNOVATIVE RESEARCH/SMALL BUS TECH TRAN	86,113	70,000	-16,113
GENERAL REDUCTION, 92 LEVEL	---	-84,000	-84,000
TOTAL, TECHNOLOGY BASE	964,026	949,813	-14,213
ADVANCE TECHNOLOGY DEVELOPMENT			
AIR SYSTEMS ADVANCED TECHNOLOGY DEVELOPMENT	30,005	80,005	+50,000
GLOBAL SURVEILLANCE/AIR DEFENSE/PRECISION STRIKE TECHN	50,999	30,000	-20,999
ADVANCED ELECTRONIC WARFARE TECHNOLOGY	12,983	12,983	---
SHIP PROPULSION SYSTEM	3,439	3,439	---
UNDERSEA SUPERIORITY TECHNOLOGY DEMONSTRATION	95,438	70,000	-25,438
SHIP CONCEPT ADVANCED DESIGN	18,820	8,700	-10,120
MARINE CORPS ADVANCED TECHNOLOGY DEMONSTRATION (ATD)	35,815	27,567	-8,228
MEDICAL DEVELOPMENT	16,956	60,148	+43,192
MANPOWER, PERSONNEL AND TRAINING ADV TECH DEV	18,652	22,452	+3,800
GENERIC LOGISTICS R&D TECHNOLOGY DEMONSTRATIONS	13,720	38,520	+24,800
ADVANCED ANTI-SUBMARINE WARFARE TECHNOLOGY	49,172	68,172	+19,000
SHALLOW WATER MCM DEMOS	5,148	5,148	---
ADVANCED TECHNOLOGY TRANSITION	63,394	40,000	-23,394
C3 ADVANCED TECHNOLOGY	10,747	10,747	---
TOTAL, ADVANCE TECHNOLOGY DEVELOPMENT	425,298	477,901	+52,613
STRATEGIC PROGRAMS			
TACTICAL SPACE OPERATIONS	2,018	---	-2,018
STRATEGIC TECHNICAL SUPPORT	3,781	3,781	---
STRATEGIC SUB & WEAPONS SYSTEM SUPPORT	54,295	54,295	---
SSBN SECURITY/SURVIVABILITY PROGRAM	27,835	27,835	---
SUBMARINE ACOUSTIC WARFARE DEVELOPMENT	16,800	16,800	---
NAVY STRATEGIC COMMUNICATIONS	36,184	26,184	-10,000
NAVAL SPACE SURVEILLANCE	735	735	---
TOTAL, STRATEGIC PROGRAMS	141,648	129,630	-12,018
TACTICAL PROGRAMS			
AIR/OCEAN TACTICAL APPLICATIONS	16,239	16,239	---
TRAINING SYSTEM AIRCRAFT	32,565	32,565	---
AVIATION SURVIVABILITY	13,672	23,072	+9,400
ASW SYSTEMS DEVELOPMENT	35,238	35,238	---
TACTICAL AIRBORNE RECONNAISSANCE	30,358	3,141	-27,217
ADVANCED COMBAT SYSTEMS TECHNOLOGY	3,750	3,750	---
UNDERSEA WARFARE & MCM DEVELOPMENT	65,660	50,000	-15,660
ADVANCED SUBMARINE COMBAT SYSTEMS DEVELOPMENT	20,341	23,341	+3,000
SURFACE SHIP TORPEDO DEFENSE	34,482	34,482	---
CARRIER SYSTEMS DEVELOPMENT	11,221	11,221	---
SHIPBOARD SYSTEM COMPONENT DEVELOPMENT	27,824	27,824	---
SHIP COMBAT SURVIVABILITY	17,315	14,588	-2,727
PILOT FISH	26,884	26,884	---
NON-ACOUSTIC ANTI-SUBMARINE WARFARE (ASW)	13,999	---	-13,999
RETRACT JUNIPER	32,960	22,960	-10,000
RADIOLOGICAL CONTROL	3,291	3,291	---
SURFACE ASW	21,150	21,150	---
ADVANCED SUBMARINE SYSTEM DEVELOPMENT	142,068	142,068	---
SUBMARINE TACTICAL WARFARE SYSTEMS	9,518	9,518	---
SHIP PRELIMINARY DESIGN & FEASIBILITY STUDIES	58,764	58,764	---
ADVANCED NUCLEAR POWER SYSTEMS	136,651	136,651	---
ADVANCED SURFACE MACHINERY SYSTEMS	92,328	92,328	---
CHALK EAGLE	71,003	71,003	---
COMBAT SYSTEM INTEGRATION	6,842	6,842	---
CONVENTIONAL MUNITIONS	42,632	42,632	---
MARINE CORPS ASSAULT VEHICLES	20,554	28,554	+8,000
MARINE CORPS MINE/COUNTERMEASURES SYSTEMS - ADV DEV	2,743	2,743	---
ELECTROMAGNETIC EFFECTS PROTECTION DEVELOPMENT	5,104	5,104	---
MARINE CORPS GROUND COMBAT/SUPPORT SYSTEM	27,624	21,570	-6,054
JOINT SERVICE EXPLOSIVE ORDNANCE DEVELOPMENT	9,359	9,359	---
MK 48 ADCAP - ADV DEV	27,248	27,248	---
ADVANCED MARINE BIOLOGICAL SYSTEM	3,470	3,470	---

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
FLEET TACTICAL DEVELOPMENT AND EVALUATION PROGRAM.....		4,464		4,464		---
OCEAN ENGINEERING TECHNOLOGY DEVELOPMENT.............		11,783		11,783		---
NAVY ENERGY PROGRAM..................................		4,329		4,329		---
FACILITIES IMPROVEMENT...............................		1,383		1,383		---
CHALK CORAL..		71,969		71,969		---
RETRACT MAPLE..		124,408		124,408		---
LINK PLUMERIA..		40,109		40,109		---
RETRACT ELM..		62,907		62,907		---
SHIP SELF DEFENSE....................................		237,204		341,904		+104,700
WARFARE SYSTEMS ARCHITECTURE AND ENGINEERING..........		7,033		7,033		---
COMBAT SYSTEMS OCEANOGRAPHIC PERFORMANCE ASSESSMENT...		19,850		19,850		---
SPECIAL PROCESSES....................................		29,863		29,863		---
GUN WEAPON SYSTEM TECHNOLOGY.........................		17,247		38,247		+21,000
ASW AND OTHER HELO DEVELOPMENT.......................		82,243		82,243		---
AV-8B AIRCRAFT - ENG DEV.............................		18,284		19,784		+1,500
STANDARDS DEVELOPMENT................................		13,724		13,724		---
S-3 WEAPON SYSTEM IMPROVEMENT........................		4,187		4,187		---
AIR/OCEAN EQUIPMENT ENGINEERING......................		6,028		6,028		---
P-3 MODERNIZATION PROGRAM............................		15,134		21,634		+6,500
AFX..		399,218		---		-399,218
ACOUSTIC SEARCH SENSORS..............................		31,775		31,775		---
V-22A..		82,296		82,296		---
AIR CREW SYSTEMS DEVELOPMENT.........................		11,126		14,976		+3,850
EW DEVELOPMENT.......................................		128,850		100,000		-28,850
MK 92 FIRE CONTROL SYSTEM UPGRADE....................		1,063		1,063		---
AEGIS COMBAT SYSTEM ENGINEERING......................		103,996		103,996		---
TRI-SERVICE STANDOFF ATTACK MISSILE..................		75,430		---		-75,430
ADVANCED MEDIUM RANGE AIR-TO-AIR MISSILE (AMRAAM).....		15,159		15,159		---
AIR-TO-AIR MISSILE SYSTEMS ENGINEERING...............		7,098		7,098		---
STANDARD MISSILE IMPROVEMENTS........................		63,022		63,022		---
NEW THREAT UPGRADE...................................		4,662		4,662		---
AIRBORNE MCM...		33,166		43,166		+10,000
SSN-688 AND TRIDENT MODERNIZATION....................		56,549		56,549		---
AIR CONTROL..		9,983		9,983		---
ENHANCED MODULAR SIGNAL PROCESSOR....................		13,443		13,443		---
SHIPBOARD AVIATION SYSTEMS...........................		1,404		1,404		---
SHIP SURVIVABILITY...................................		10,292		10,292		---
COMBAT INFORMATION CENTER CONVERSION.................		11,534		11,534		---
SUBMARINE COMBAT SYSTEM..............................		87,481		87,481		---
NEW DESIGN SSN.......................................		240,222		240,222		---
SSN-21 DEVELOPMENTS..................................		76,129		76,129		---
SUBMARINE TACTICAL WARFARE SYSTEM....................		25,427		34,427		+9,000
SHIP CONTRACT DESIGN/ LIVE FIRE T&E..................		47,137		37,137		-10,000
NAVY TACTICAL COMPUTER RESOURCES.....................		17,572		22,572		+5,000
MINE DEVELOPMENT.....................................		5,969		5,969		---
UNGUIDED CONVENTIONAL AIR-LAUNCHED WEAPONS...........		29,972		29,972		---
MARINE CORPS MINE COUNTERMEASURES SYSTEMS - ENG DEV...		1,296		1,296		---
JOINT DIRECT ATTACK MUNITION.........................		10,352		10,352		---
JOINT SERVICE EXPLOSIVE ORDNANCE DEVELOPMENT.........		6,296		6,266		---
PACE AND ELECTRONIC WARFARE (SEW) ARCHITECTURE/ENGINEE		11,916		6,916		-5,000
NAVY ENERGY PROGRAM..................................		3,137		3,137		---
MARINE CORPS COMMAND/CONTROL/COMMUNICATIONS SYSTEMS...		26,223		26,223		---
JOINT STANDOFF WEAPON SYSTEMS........................		90,503		50,503		---
SHIP SELF DEFENSE....................................		116,760		118,860		+2,100
INTELLIGENCE...		345		345		---
MEDICAL DEVELOPMENTS.................................		4,030		4,030		---
NAVIGATION/ID SYSTEM.................................		80,047		83,047		+3,000
DISTRIBUTED SURVEILLANCE SYSTEM......................		135,879		135,879		---
SEW SURVEILLANCE/RECONAISSANCE SUPPORT...............		17,063		11,063		-6,100
F/A-18 SQUADRONS.....................................		1,485,496		1,485,496		---
E-2 SQUADRONS..		48,930		48,930		---
FLEET TELECOMMUNICATIONS (TACTICAL)..................		34,435		34,435		---
TOMAHAWK AND TOMAHAWK MISSION PLANNING CENTER (TMPC)..		47,440		47,440		---
INTEGRATED SURVEILLANCE SYSTEM.......................		71,781		74,781		+3,000
AMPHIBIOUS TACTICAL SUPPORT UNITS....................		2,823		2,823		---
CONSOLIDATED TRAINING SYSTEMS DEVELOPMENT............		37,200		46,200		+9,000
TACTICAL DATA LINKS..................................		39,582		39,562		---
SURFACE ASW COMBAT SYSTEM INTEGRATION................		24,905		24,905		---
AVIATION IMPROVEMENTS................................		74,976		74,976		---
F-14 UPGRADE...		71,995		149,995		+78,000
OPERATIONAL REACTOR DEVELOPMENT......................		57,784		57,784		---
MARINE CORPS COMMUNICATIONS..........................		9,151		9,151		---
MARINE CORPS GROUND COMBAT/SUPPORTING ARMS SYSTEMS....		24,259		17,615		-6,644
MARINE CORPS COMBAT SERVICES SUPPORT.................		9,656		595		-9,061
MARINE CORPS INTELLIGENCE/ELECTRONICS WARFARE SYSTEMS.		22,772		22,772		---
MARINE CORPS COMMAND/CONTROL/COMMUNICATIONS SYSTEMS...		36,735		46,735		+10,000
TOTAL, TACTICAL PROGRAMS.............................		6,018,884		5,689,894		-328,990
INTELLIGENCE & COMMUNICATIONS						
TACTICAL COMMAND SYSTEM..............................		30,617		30,617		---
BATTLE GROUP PASSIVE HORIZON EXTENSION SYSTEM........		24,735		24,735		---
NAVY SPACE AND ELECTRONIC WARFARE (SEW) SUPPORT.......		5,819		4,319		-1,500
SATELLITE COMMUNICATIONS.............................		55,762		55,782		---
CLASSIFIED PROGRAMS..................................		628,026		415,425		-212,601
TOTAL, INTELLIGENCE & COMMUNICATIONS.................		744,979		530,878		-214,101

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
DEFENSEWIDE MISSION SUPPORT			
ENVIRONMENTAL PROTECTION	44,461	44,461	---
THREAT SIMULATOR DEVELOPMENT	29,657	29,657	---
TARGET SYSTEMS DEVELOPMENT	37,474	37,474	---
PERSONNEL, TRAINING, SIMULATION, AND HUMAN FACTORS	1,069	1,069	---
MAJOR T&E INVESTMENT	52,498	52,498	---
STUDIES AND ANALYSIS SUPPORT - NAVY	3,856	3,856	---
CENTER FOR NAVAL ANALYSES	43,260	43,260	---
FLEET TACTICAL DEVELOPMENT AND EVALUATION	4,456	4,456	---
TECHNICAL INFORMATION SERVICES	10,273	14,773	+4,500
MANAGEMENT, TECHNICAL & INTERNATIONAL SUPPORT	12,787	12,787	---
RDT&E SCIENCE AND TECHNOLOGY MANAGEMENT	60,767	60,767	---
RDT&E INSTRUMENTATION MODERNIZATION	39,419	39,419	---
RDT&E SHIP AND AIRCRAFT SUPPORT	60,587	60,587	---
TEST AND EVALUATION SUPPORT	293,422	293,422	---
OPERATIONAL TEST AND EVALUATION CAPABILITY	8,329	8,329	---
MARINE CORPS TACTICAL EXPLOITATION OF NATIONAL CAPABIL	1,314	4,314	+3,000
LONG RANGE PLANNING SUPPORT	14,374	3,000	-11,374
NAVY SCIENCE ASSISTANCE PROGRAM	6,969	6,969	---
DEFENSE METEOROLOGICAL SATELLITE PROGRAM (DMSP)	11,550	666	-10,884
MANUFACTURING TECHNOLOGY DEVELOPMENT	---	205,000	+205,000
CONTRACT ADMINISTRATION/AUDIT	184,260	---	-184,260
GENERAL REDUCTION, OVERHEAD	---	-120,000	-120,000
TOTAL, DEFENSEWIDE MISSION SUPPORT	920,779	826,661	-94,118
TOTAL, RESEARCH DEVEOPMENT TEST & EVAL NAVY	9,215,604	8,604,777	-610,827

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

Appropriations, 1993 .... $13,199,006,000
New obligational authority, 1994:
Estimate 13,694,984,000
Recommenced 12,608,995,000
Decrease 1,085,989,000

This appropriation funds Research, Development, Test and Evaluation activities of the Air Force.

COMMITTEE RECOMMENDATIONS

AUTHORIZATION CHANGES

The Committee recommends the following changes, in accordance with authorization action:

[In thousands of dollars]

	Request	HASC	HAC	Change
Human Systems Technology	51,392	49,573	49,573	−1,819
Aerospace Propulsion	78,100	81,100	81,100	+3,000
Crew Systems and Personnel Protection Technology	10,460	12,960	12,960	+2,500
National Aero Space Plane	43,259	80,000	80,000	+36,741
Space and Missile Rocket Propulsion	10,027	11,430	11,430	+1,403
Space Systems Technology	....	8,000	8,000	+8,000
C3I Subsystem Integration	15,882	8,882	8,882	−7,000
Advanced Interdiction Aircraft (AX)	3,835	....	....	−3,835
Night precision attack	82,210	....	....	−82,210
Follow-on Tactical Reconnaissance System	63,338	17,645	17,649	−47,689
Information System Security Program	15,418	16,918	16,918	+1,500
Threat Simulator Development	34,362	49,962	46,962	+12,600
Contract Administration/Audit	243,178	....	....	−243,178

PROGRAM GROWTH/BUDGET EXECUTION ADJUSTMENTS

The budget request included amounts for some programs which exceed by justifiably large margins the amounts provided for fiscal years 1992 or 1993. Other programs had significant prior year unobligated balances, and budget adjustments are necessary due to poor budget execution. The Committee accordingly recommends the following reductions:

[In thousands of dollars]

	Request	HASC	HAC	Change
F–16 Squadrons	116,947	112,547	76,947	−40,000
F–15 Squadrons	91,497	91,497	66,497	−25,000
Manned Destructive Suppression	20,496	20,496	15,496	−5,000
Advanced Medium Range Air-to-Air Missile (AMRAAM)	69,785	69,785	54,785	−15,000
National Airspace System (NAS) Plan	18,773	18,773	12,773	−6,000

TECHNOLOGY BASE

SEISMIC RESEARCH

The proliferation of nuclear weapons continues to be one of the most serious threats to U.S. national security, emphasizing the need for an effective capability to seismically monitor potential nuclear tests. Central to this capability is a robust seismic monitoring research program. The Committee strongly supports the basic seis-

mic research program established by the Air Force Office of Scientific Research, and therefore approves Defense Research Sciences (PE 0601102F, project 2309) funding of $7,000,000 only for the Joint Seismic Program, and $14,000,000 only for capitalization of the Global Seismic Network, both administered by the Incorporated Research Institutions for Seismology, and $4,409,000 for university-based seismic research.

In addition, the Committee recognizes the need for additional work to provide mature technology for the operational Air Force user. The Committee recommends the addition of $2,000,000 to the Geophysics program (PE 0602101F), project 7600, only for contractual research to be managed by the Phillips Laboratory Geophysics Directorate.

GEOPHYSICS (0602101F)

The Air Force requested $30,252,000 for Geophysics. The Committee recommends $37,252,000, an increase of $7,000,000 to the budget request. Within these funds, $2,000,000 shall be available only as addressed under the heading "Seismic Research" above, and $5,000,000 only to upgrade computational resources to detect the detonation of low-yield nuclear devices. The service has conducted research for over forty years into geophysical methods to discriminate between nuclear, non-nuclear and natural seismic energy sources. Progress in detecting small detonations has been limited by the inability to utilize massive parallel computing technology to do more detailed modeling of the earth's subsurface.

MATERIALS (0602120F)

The Air Force requested $70,805,000 for Materials. The Committee recommends $71,305,000, an increase of $500,000 only for Remote Aircraft Fatigue Sensing.

AEROSPACE PROPULSION (0602203F)

The Air Force requested $78,100,000 for Aerospace Propulsion Technology. The Committee recommends $81,100,000, an increase of $3,000,000 only to support the ongoing research project on endothermic jet fuels including coal-based fuels. The Air Force is directed to allocate these additional funds on the same basis as was done in the previous two fiscal years.

ROCKET PROPULSION AND ASTRONAUTICS TECHNOLOGY (0602302F)

The Air Force requested $40,031,000 for Rocket Propulsion and Astronautics Technology. The Committee believes these programs to be a high priority and recommends $51,137,000, a total increase of $11,106,000, with the increase allocated as follows: $10,000,000 for Thermionics Space Power Program; $854,000 for Space Systems Propulsion Technology; and $252,000 for Missile System Propulsion Technology.

ADVANCED WEAPONS (0602601F)

The Air Force requested $32,961,000 for Advanced Weapons. The Committee recommends $32,461,000, a reduction of $500,000 to reflect a reduced requirement for nuclear effects radiation studies.

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COMMAND, CONTROL, AND COMMUNICATIONS (0602702F)

The Air Force requested $95,957,000 for command, control, and communications programs. The Committee recommends $85,957,000, a reduction of $10,000,000, which will permit growth only for inflation above the $82,453,000 that the Air Force intends to spend in fiscal year 1993.

ADVANCED TECHNOLOGY DEVELOPMENT

ADVANCED MATERIALS FOR WEAPON SYSTEMS (0603112F)

The Air Force requested $15,825,000 for Advanced Materials for Weapon Systems. The Committee recommends $25,825,000, an increase of $10,000,000 only for the operation of the National Center for Industrial Competitiveness (NCIC), near Wright-Patterson Air Force Base, Ohio.

CREW SYSTEMS AND PERSONNEL PROTECTION TECHNOLOGY (0603231F)

The Air Force requested $10,460,000 for Crew Systems and Personnel Protection Technology. The Committee recommends $12,960,000, an increase of $2,500,000 above the request.

Advanced Life Support: The Air Force requested $1,038,000 for Advanced Life Support. The Committee recommends $3,538,000, an increase of $2,500,000 only for Project 2830.

NATIONAL AERO SPACE PLANE TECHNOLOGY PROGRAM (0603269F)

The Air Force requested $43,259,000 for the National Aero Space Plane Technology Program. The Committee recommends $80,000,000, an increase of $36,741,000 above the request. These funds support the joint Department of Defense/National Aeronautics and Space Administration restructured National Aero Space Plane (NASP) technology program for fiscal year 1994. This funding is provided contingent upon compliance with section 242 of the National Defense Authorization Act for Fiscal Year 1993.

SPACE AND MISSILE ROCKET PROPULSION (0603302F)

The Air Force requested $10,027,000 for Space and Missile Rocket Propulsion. The Committee recommends $11,430,000, an increase of $937,000 for Space Systems Propulsion Technology and $466,000 for Missile Systems Propulsion Technology.

SPACE SUBSYSTEMS TECHNOLOGY (0603428F)

No funds were requested for this program. The Committee recommends $8,000,000 solely to continue the HAVE GAZE program.

ADVANCED RADIATION TECHNOLOGY (0603605F)

The Air Force requested $55,415,000 for Advanced Radiation Technology. The Committee recommends $78,315,000, an increase of $22,900,000 above the budget request.

Excimer Laser: The Committee recommends $22,000,000 only for the Excimer Laser Technology Development Program. This program is managed by the Air Force Phillips Laboratory and supports two major Air Force research and development programs, one

dealing with High Resolution Imaging (HRI) of space objects and the other pursuing investigations of Advanced Excimer Laser Technology development. Field testing for this program is expected to be conducted at the High Energy Laser Test Facility (HELSTF) facility at White Sands Missile Range. Of these funds, $2,000,000 shall be available to investigate the feasibility of specific commercial applications of this dual use technology.

High Power Microwave (HPM) Technology: To insure stable and continued High Power Microwave (HPM) development, the Committee recommends an additional $900,000, providing $11,600,000 only for project 3152.

CIVIL AND ENVIRONMENTAL ENGINEERING TECHNOLOGY (0603723F)

The Air Force requested $8,435,000 for Civil and Environmental Engineering Technology. The Committee recommends $13,435,000, an increase of $5,000,000 to the request.

Spray Casting: The Committee is aware that the Air Force has demonstrated the potential of spray casting as an alternative metalization process to conventional electroplating and other mineral finishing processing. The process, which sprays nebulized molten metal droplets directly onto base metals to form corrosion resistant coatings, is efficient, cost effective and does not generate wastes. The Committee recommends $5,000,000 only to continue development of production scale spray casting equipment.

C^3I SUBSYSTEM INTEGRATION (0603726F)

The Air Force requested $15,882,000 for C^3I Subsystem Integration. The Committee believes that many of the technologies that the Air Force is developing for digital data transmission are available commercially. The Committee also notes that fiscal year 1993 funds were used as a reprogramming source. Therefore the Committee recommends $8,882,000, a reduction of $7,000,000.

COMMAND, CONTROL, AND COMMUNICATIONS ADVANCED DEVELOPMENT (0603789F)

The Air Force requested $17,066,000, more than doubling the actual amount obligated in fiscal year 1992. The Committee recommends a reduction of $10,000,000.

STRATEGIC PROGRAMS

B–1B (0604226F)

The Air Force requested $93,543,000 for the B–1B. The Committee recommends $126,543,000, an increase of $33,000,000.

Electronic Countermeasure (ECM) systems: Last year, the Committee expressed concern regarding the defensive electronic countermeasures suite for the B–1B aircraft. The Air Force has requested $7.2 million for ECM risk reduction efforts. The Committee understands that these funds will only cover the evaluation of two competing systems. This approach limits options and increases risk. Therefore, the Committee recommends $25,000,000 and directs that the ECM risk reduction effort involve no less than three candidate systems.

Relative Targeting System/GPS-Aided Munition (RTS/GAM): The Air Force has requested authority to develop and integrate the GPS-Aided Targeting System (GATS)/GPS-Aided Munition (GAM) on the B–2 to provide an interim near-precision capability on that platform. The Air Force has requested no similar authority to provide such a capability to the B–1. The Committee understands that an enhancement of the B–1s radar will give it the capability through a Relative Targeting System to employ GAMs or GAM-like munitions. Therefore, the Committee recommends $8,000,000 only for a Relative Targeting System demonstration to determine if upgrading the B–1's radar will provide the capability to employ interim precision weapons. The demonstration should determine the operational effectiveness of the RTS Upgrade as well as the integration steps necessary to fully implement it on the B–1.

B–2 ADVANCED TECHNOLOGY BOMBER (0604240F)

The Air Force requested $790,497,000 for the B–2 Advanced Technology Bomber. The Committee recommends $838,497,000, an increase of $48,000,000 to the request.

GPS-Aided Targeting System/GPS-Aided Munition (GATS/GAM): The Committee supports the decision of the Air Force to integrate GPS-Aided Targeting System/GPS-Aided Munition (GATS/GAM) into the B–2 conventional development effort to provide an earlier, effective, affordable, all weather, precision guided conventional munition for the B–2. The Committee understands that $26,000,000 of the $74,000,000 required for this effort can be accommodated within the B–2 RDT&E program. Accordingly, the Committee recommends an additional $48,000,000 for GATS/GAM development effort.

B–52 SQUADRONS (0101113F)

The Air Force did not request any funding for B–52 Squadrons. The Committee recommends $6,300,000 only to complete Have Lite technology development efforts, which will further reduce the unit cost of subsequent Have Nap missile procurement.

MINUTEMAN SQUADRONS (0101213F)

The Air Force requested $184,335,000 for Minuteman Squadrons. The Committee recommends $118,059,000, a reduction of $66,276,000 to the request.

Reentry Systems Launch Program (RSLP): The Air Force requested $16,336,000 for project 4208, the Reentry Systems Launch Program. While the Committee fully supports this effort, funding should be included with expendable launch vehicles and not ICBM's. Consequently, the Committee has transferred the funding in its entirety to program element 0305119F, Medium Launch Vehicles.

Propulsion Replacement Program: The Air Force requested $49,940,000 as a new start program for a Propulsion Replacement Program. In this period of constrained funding availability, the Committee recommends that the Air Force re-evaluate the need to begin this program in fiscal year 1994.

MINIMUM ESSENTIAL EMERGENCY COMMUNICATIONS NETWORK (0303131F)

The Air Force requested $35,634,000 for communications systems specifically designed to provide assured communications connectivity in a stressed environment, including the Ground Wave Emergency Network, the Dual Frequency Receiver, the High Power Transmit Set, and the Advanced VLF Receiver. This request compares with an actual appropriation of only $10,700,000 in fiscal year 1993.

The Committee is concerned that the fiscal year 1994 request would start a $100 million program for a "next generation" very low frequency and low frequency systems. Since the requirement for such a development program is questionable in the current fiscal and geopolitical environments, the Committee recommends a reduction of $35,000,000.

MILSTAR SATELLITE COMMUNICATIONS SYSTEM (0303601F)

As discussed elsewhere under Space and Related Activities, the Committee recommends a reduction of $100,000,000.

UHF SATELLITE COMMUNICATIONS (0303606F)

The Air Force has formally requested $11,457,000 for this effort. However, the budget justification provided indicates that the Air Force intends to spend a total of $22,914,000 in fiscal year 1994. Pending clarification of the actual funding requirement, the Committee has deleted the entire request of $11,457,000.

ARMS CONTROL IMPLEMENTATION (0305145F)

The Air Force requested $7,107,000 compared with an actual appropriation of only $4,512,000 in fiscal year 1993. A reduction of $3,000,000 is recommended.

SPACETRACK (0305910F)

The Air Force requested $45,246,000 for SPACETRACK. While the Committee recommends fully funding the entire request, it directs that within this amount no less than $19,340,000, an increase of $5,000,000, shall be available only for continuation of research and development associated with the HAVE STARE System. Additional details are provided in the classified report which accompanies this unclassified report.

NUDET DETECTION SYSTEM (0305913F)

The Air Force requested a total of $9,359,000 for this program. As discussed elsewhere in this report, a reduction of $1,000,000 is recommended related to potential delays in the block IIR Global Positioning System launch.

KC–135S (0401218F)

The Air Force requested $20,811,000 for KC–135S. The Committee recommends $3,441,000 only to continue the Improved Air Refueling System (IARS).

Last year, Congress denied funding for the multipoint refueling project and requested the Air Force to reassess its requirements and report back to the Committees on Appropriations. To date, this report has not been received.

In addition, the General Accounting Office in its report on the Air Force's Aerial Refueling Initiative indicates that the initiative was not adequately assessed within the Department. Accordingly, the Committee recommends that the Secretary of Defense fully assess the aerial refueling initiative from a cross-service perspective. This assessment should include interoperability, safety/reliability, fuel off-load rates, and trade-offs between internal and external probes. The assessment should also contain a cost analysis that considers potential tanker retirements, including Marine Corps KC-130 assets.

Accordingly, the Committee recommends denial of the following two new start programs: Receptacle Modification and Multipoint Modification.

Tactical Programs

COMMAND, CONTROL, AND COMMUNICATIONS APPLICATIONS (0603617F)

The Air Force requested $9,395,000 for this program. Due to unjustifiable growth over the fiscal year 1993 appropriation of $4,100,000, a reduction of $6,000,000 is recommended.

AIRCRAFT AVIONICS EQUIPMENT DEVELOPMENT (0604201F)

The Air Force requested $6,637,000 for Aircraft Avionics Equipment Development. The Committee recommends the budget request.

Embedded GPS/INS: The Committee is aware of the Air Force plan to competitively procure aircraft navigation systems with the Embedded GPS/INS Program for tri-service applications. The Committee commends the Air Force for its leadership in this program and recognizes its success in large quantity procurement programs such as the GAU-8 and Air Force Standard Navigator programs where multiple production sources competed for yearly quantities. With the large number of committed applications, the potential for this system to be fielded in over twenty different aircraft, and the need to protect the industrial base, the Committee directs the Air Force to select and maintain at least two sources of production for this critical aircraft navigation system. The Committee understands this will not affect the current acquisition plan.

C-17 PROGRAM (0604231F)

The Air Force requested $179,799,000 for the C-17 Program. The Committee recommends $154,799,000, a reduction of $25,000,000 below the request. Since these funds were requested to support potential changes identified by the flight and ground test programs, other unknown engineering changes, and economic price adjustment costs, the Committee recommends that they not be appropriated until required and justified.

SPECIALIZED UNDERGRADUATE PILOT TRAINING (0604233F)

The Air Force requested $36,835,000 for the Specialized Undergraduate Pilot Training program. The Committee recommends $5,596,000, a decrease of $31,239,000 to the request.

The Committee recommends approval of the $2,205,000 for the T-1A Tanker-Transport Training System (TTTS) program and $191,000 for the T-3A Enhanced Flight Screen (EFS) program.

Joint Primary Aircraft Training System (JPATS): The Air Force requested $34,439,000 for JPATS in this program element and $7,136,000 for the JPATS Ground Based Test System in program element 0604227F, for a combined fiscal year request of $41,575,000 for JPATS. The Committee has consolidated the total funding for JPATS into this program element and then recommends $3,200,000 for JPATS program office support in fiscal year 1994.

The Committee fully supports the JPATS program and believes that it is the trainer of the future. However, the Committee also believes that the concerns on missionization and domestic content need to be addressed prior to contract award. In addition, the Committee has concerns that JPATS procurement will not be as simple as planned. Taking an aircraft off-the-shelf to meet DOD requirements without at least a minimum amount of modification and testing is risky. Therefore, the Committee recommends that the Air Force delay contract award of JPATS until all issues are resolved.

F-22 EMD (0604239F)

The Air Force requested $2,250,997,000 for the F-22 Engineering, Manufacturing and Development program. While the Committee recommends the budget request, it has several concerns as follows:

Assembly: The Committee is concerned that the Department of Defense is exploring methods for maintaining the viability of military depots which will adversely affect private enterprise. Some officials particularly within the Air Force, have suggested that major weapon systems, such as the F-22, be assembled in Air Force depot centers. The Committee is concerned that such a practice will severely impact the military industrial base of our nation which remains critical during this time of defense drawdowns. In addition, the Navy's experience concerning remanufacture of F-14 aircraft by its depot has not been good. Accordingly, to protect our domestic industrial base, the Committee firmly believes that the Air Force should not plan to assemble the F-22 in a DOD depot without first submitting a cost-effective analysis to the congressional defense committees justifying such a decision.

Tooling: The Air Force anticipates requiring over $700 million for tooling costs of the F-22. Most of the funds for hard or production tooling will be obligated in fiscal years 1994 and 1995 prior to a decision on tactical aircraft modernization being made by the Department or Congressional action. The Committee questions whether such a large investment in hard tooling is premature in fiscal year 1994, and therefore, recommends that $200,000,000 of the fiscal year 1994 funds not be obligated and expended until the Secretary of Defense reviews and specifically approves the require-

ment for hard tooling and submits such approval to the congressional defense committees.

Automatic Test Equipment: In accordance with the write-up on Automatic Test Systems (ATS) addressed earlier in this section, the Committee recommends that the Air Force not proceed with weapon system-unique ATS for the F–22 until such time as the Secretary of Defense submits the required cost/benefits analysis to the congressional defense committees.

JOINT TACTICAL FUSION PROGRAM (0604321F)

The Air Force requested $4,221,000 for the Joint Tactical Fusion Program. The request includes funds for a Contingency Airborne Reconnaissance System (CARS), Joint Services Imagery Processing System (JSIPS) and improved broad area imagery source definition and test interface. The Committee has recommended that the CARS program be terminated, the Air Force has terminated the JSIPS' sensor contract, and funds for an improved broad area imagery platform have not been identified. Therefore, the Committee recommends $2,221,000, a reduction of $2,000,000.

COMPUTER RESOURCES MANAGEMENT TECHNOLOGY (0604740F)

The Air Force requested $7,137,000 for Computer Resources Management Technology. The Committee recommends $16,137,000, an increase of $9,000,000 only for the Computer Resource Development Program (CARDS). The CARDS program is designed to facilitate the introduction of advanced computer software technology into an operational Air Force program. The additional funding is to support the central archiving and reuse of defense software which has already been bought and paid for by the Department of Defense.

TACTICAL AIM MISSILE (0207161F)

The Air Force requested $33,887,000 for Tactical AIM Missile. As done in the previous three fiscal years, the Committee recommends consolidating the Navy and Air Force funding in the Defense-wide account. Therefore, the Committee recommends no funding in this program element.

FOLLOW-ON TACTICAL RECONNAISSANCE SYSTEM (0207217F)

The Air Force has requested $65,338,000 for the Follow-on Tactical Reconnaissance System. The Committee recommends $17,649,000. The Committee recommends that $47,689,000 be transferred to the Office of the Secretary of Defense. Details are addressed on the C³I section of this report.

AIR FORCE TENCAP (0207247F)

The Air Force has requested $14,722,000 for Air Force Tactical Exploitation of National Capabilities Programs (TENCAP). The Committee recommends $4,722,000, a decrease of $10,000,000. Details are provided in the C³I section of this report.

INTELLIGENCE AND COMMUNICATIONS

DEFENSE SATELLITE COMMUNICATIONS SYSTEM (DSCS) (0303110F)

The Air Force requested $25,522,000 for the Defense Satellite Communications System. According to the justification material submitted, a portion of the funding is to be used to "initiate advanced concepts studies for the DSCS SHF Replenishment program". Neither the Department of Defense nor the Congress has approved the requirement for a DSCS replenishment program. A reduction of $5,000,000 is recommended and the Air Force is directed that no funds in this program or any other are available to begin a DSCS replenishment program in fiscal year 1994.

DEFENSE-WIDE MISSION SUPPORT

SPACE TEST PROGRAM (0603402F)

The Air Force has requested $50,465,000 for the Space Test Program. Since this is a level of effort program and since the actual expenditure in fiscal year 1992 was only $38,706,000, the Committee recommends a reduction of $5,000,000.

SATELLITE SYSTEMS SURVIVABILITY (0603438F)

The Air Force has requested $10,732,000 for Satellite Systems Survivability. In view of the reduced requirement for such programs, the Committee recommends a reduction of $7,000,000 to freeze the program at the fiscal year 1993 level.

TRAINING SYSTEMS DEVELOPMENT (0604227F)

The Air Force requested $30,015,000 for Training Systems Development. The Committee recommends $20,015,000, a decrease of $10,000,000 to the request. The funding of $7,136,000 for the Joint Primary Aircraft Training System (JPATS) Ground Based Training System (GBTS) has been transferred to program element 0604233F.

Since this program element funds the development of aircrew and maintenance training techniques and devices, the Committee questions the need for a development effort on the Interactive Multi-Media series on the History of Air Power to the curriculum of the Air Force Academy. Therefore, the Committee recommends a general reduction of $2,864,000 to preclude the use of funds for such efforts.

THREAT SIMULATOR DEVELOPMENT (0604256F)

The Air Force requested $34,362,000 for Threat Simulator Development. The Committee recommends $46,962,000, an increase of $12,600,000 only for the Real-Time Electromagnetic Digitally Controlled Analyzer Processor (REDCAP) as proposed by the House Armed Services Committee.

The Committee also recommends $10,670,000, the budget request, only for the Electronic Combat Integration Test (ECIT) facility at Edwards Air Force Base.

R&M MATURATION/TECHNOLOGY INSERTION (0604609F)

The Air Force requested $20,593,000 for Reliability and Maintainability Technology Insertion Program (RAMTIP). The Committee recommends the budget request.

Laser Ordnance Initiation System (LOIS): Because of a successful demonstration of a Laser Ordnance Initiation System (LOIS) drop-in replacement system for the primary explosive and hot gas system for the F-16 ejection seat at Ogden Air Logistics Center, the Air Combat Command is considering incorporating LOIS in B-1 and F-16 ejection seats. Therefore, the Air Force should pursue the qualification of a pyro laser initiation and fiber optic egress system for potential introduction of this technology into Air Force aircraft egress systems.

NAVIGATION/RADAR/SLED TRACT TEST SUPPORT (0605708F)

The Air Force requested $28,313,000 for Navigation/Radar/Sled Track Test Support. The Committee recommends $31,813,000, an increase of $3,500,000 only to initiate Phase II, magnetic levitation prototyping and initial electromagnetic propulsion design, for the High Velocity Sled Tract at Holloman Air Force Base, New Mexico.

MEDIUM LAUNCH VEHICLES (0305119F)

The Air Force requested a total of $58,502,000 in fiscal year 1994 for medium launch vehicles and associated support. A net increase of $41,336,000 is recommended, allocated as follows.

As discussed elsewhere in this report under Space and Related Activities, the Committee has added a total of $37,000,000 for improvements to the space launch ground infrastructure. In order to ensure that this modernization keeps pace with deployment of the medium lift Spacelifter launch vehicle, it is directed that $15,000,000 be allocated to the Western Space Launch Facility and $22,000,000 to the Eastern Space Launch Facility. The Committee stipulates that these funds are to be used solely to begin a long term ground infrastructure modernization program at these two locations.

As also discussed elsewhere in this report, the Committee has transferred a total of $16,336,000 to this program from the Reentry System Launch Program (0101213F).

Finally, the Committee has included a reduction, without prejudice, of $12,000,000 to reflect the probable delay in the requirement for the medium Launch Vehicle III program due to slippage in the availability of the Global Positioning System Block IIR payload.

TITAN SPACE LAUNCH VEHICLES (0305144F)

No funds are requested in the Titan Space Launch Vehicles program for the Centaur Processing Facility. The Committee recommends an increase of $6,000,000 solely for this required new facility.

While the Department has not proposed a requirement and the Congress has not agreed to provide any funding, in the event that additional Titan IV launch vehicles are required beyond the 41 sets already under contract, any additional solid rocket motors will be acquired through free and open competition.

DEFENSE METEOROLOGICAL SATELLITE PROGRAM (DMSP) (0305160F)

The Air Force requested $31,953,000 for the Defense Meteorological Satellite Program (DMSP), a significant increase over the fiscal year 1993 appropriation of $23,300,000. As discussed elsewhere in this report, pending resolution of ongoing studies which may lead to the merger of all military and civilian environmental satellite programs, the Committee recommends a reduction of $10,000,000.

MANUFACTURING TECHNOLOGY DEVELOPMENT (0708011F)

Funding for the Air Force's Manufacturing Technology Development was transferred to the RDT&E Defense-wide account in fiscal year 1994. The Committee recommends $130,000,000 for Manufacturing Technology Development. This includes $60,000,000 only for the National Center for Manufacturing Sciences (NCMS); $7,200,000 only for the Computer-aided Acquisition and Logistics Support Technology Transfer (CATT) program within the Air Force Material Command to enhance the advanced logistic facility's ability to test and rapidly deploy Computer Aided Acquisition and Logistic Support (CALS) to the private sector and establish cooperative research and development agreements with area industries and institutions through establishment of a test site for technology development at Oklahoma City Air Logistics center and authorization of a CATT Special Project Office (SPO); $2,000,000 only to continue the development of a ductile cast iron solidification/pattern definition simulation; and $1,200,000 only for Platform for the Automated Construction of intelligent Systems (PACIS). The balance of the funding shall be used for Air Force programs which were included in the RDT&E Defense-wide appropriation request for fiscal year 1994 budget request.

PROGRAM SUMMARY

The following schedule shows the budget estimate, the recommended appropriation, and the change from the budget estimate for fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
RESEARCH DEVEOPMENT TEST & EVAL AF			
TECHNOLOGY BASE			
IN-HOUSE LABORATORY INDEPENDENT RESEARCH..............	5,155	5,155	---
DEFENSE RESEARCH SCIENCES..............................	241,317	255,317	+14,000
GEOPHYSICS...	30,252	37,252	+7,000
MATERIALS..	70,806	71,306	+500
AEROSPACE FLIGHT DYNAMICS..............................	64,238	64,238	---
HUMAN SYSTEMS TECHNOLOGY...............................	51,392	49,573	-1,819
AEROSPACE PROPULSION...................................	78,100	81,100	+3,000
AEROSPACE AVIONICS.....................................	74,835	74,835	---
PERSONNEL, TRAINING AND SIMULATION.....................	28,942	28,942	---
CIVIL ENGINEERING AND ENVIRONMENTAL QUALITY............	7,187	7,187	---
ROCKET PROPULSION AND ASTRONAUTICS TECHNOLOGY..........	40,031	51,137	+11,106
ADVANCED WEAPONS.......................................	32,551	32,461	-500
CONVENTIONAL MUNITIONS.................................	46,653	46,653	---
COMMAND CONTROL AND COMMUNICATIONS.....................	85,957	85,957	-10,000
SMALL BUSINESS INNOVATIVE RESEARCH/SMALL BUS TECH TRAN	140,976	123,777	-17,199
GENERAL REDUCTION, FY92 LEVEL	---	-200,000	-200,000
TOTAL, TECHNOLOGY BASE	1,008,001	814,089	-193,912
ADVANCE TECHNOLOGY DEVELOPMENT			
LOGISTICS SYSTEMS TECHNOLOGY...........................	14,318	14,318	---
ADVANCED MATERIALS FOR WEAPON SYSTEMS..................	15,825	25,825	+10,000
AEROSPACE PROPULSION SUBSYSTEMS INTEGRATION............	28,004	28,004	---
ADVANCED AVIONICS FOR AEROSPACE VEHICLES...............	49,226	49,226	---
AEROSPACE VEHICLE TECHNOLOGY...........................	13,114	13,114	---
AEROSPACE STRUCTURES...................................	12,641	12,641	---
AEROSPACE PROPULSION AND POWER TECHNOLOGY..............	36,614	36,614	---
PERSONNEL, TRAINING AND SIMULATION TECHNOLOGY..........	8,810	8,810	---
CREW SYSTEMS AND PERSONNEL PROTECTION TECHNOLOGY.......	10,400	12,900	+2,500
GLOBAL SURVEILLANCE/AIR DEFENSE/PRECISION STRIKE TECHN	14,900	14,900	---
ADVANCED FIGHTER TECHNOLOGY INTEGRATION................	15,613	15,613	---
LINCOLN LABORATORY.....................................	22,806	22,806	---
ADVANCED AVIONICS INTEGRATION..........................	30,384	30,384	---
NATIONAL AERO SPACE PLANE TECHNOLOGY PROGRAM...........	43,259	80,000	+36,741
EW TECHNOLOGY..	25,000	25,000	---
SPACE AND MISSILE ROCKET PROPULSION....................	10,027	11,430	+1,403
BALLISTIC MISSILE TECHNOLOGY...........................	55,900	55,900	---
AIRBORNE LASER TECHNOLOGY..............................	3,845	3,845	---
ADVANCED SPACECRAFT TECHNOLOGY.........................	24,275	24,275	---
SPACE SYSTEMS ENVIRONMENTAL INTERACTIONS TECHNOLOGY...	3,800	3,800	---
SPACE SUBSYSTEMS TECHNOLOGY............................	---	5,000	+5,000
CONVENTIONAL WEAPONS TECHNOLOGY........................	25,984	25,984	---
ADVANCED RADIATION TECHNOLOGY..........................	55,415	78,315	+22,000
WEATHER SYSTEMS TECHNOLOGY.............................	4,452	4,452	---
CIVIL AND ENVIRONMENTAL ENGINEERING TECHNOLOGY.........	8,435	13,435	+5,000
C3I SUBSYSTEM INTEGRATION..............................	15,882	8,882	-7,000
ADVANCED COMPUTING TECHNOLOGY..........................	19,819	19,819	---
C3 ADVANCED DEVELOPMENT................................	17,000	7,000	-10,000
TOTAL, ADVANCE TECHNOLOGY DEVELOPMENT..................	589,332	658,876	+69,544
STRATEGIC PROGRAMS			
B-1B (H)...	93,543	126,543	+33,000
B-2 ADVANCED TECHNOLOGY BOMBER.........................	790,497	838,497	+48,000
SYSTEMS SURVIVABILITY (NUCLEAR EFFECTS)................	3,643	3,643	---
B-52 SQUADRONS...	---	8,300	+8,300
ADVANCED CRUISE MISSILE................................	25,392	25,392	---
MINUTEMAN SQUADRONS....................................	184,335	118,059	-66,276
JOINT SURVEILLANCE SYSTEM..............................	3,246	3,246	---
SURVEILLANCE RADAR STATIONS/SITES......................	8,306	8,306	---
DISTANT EARLY WARNING (DEW) RADAR STATIONS.............	2,578	2,578	---
MINIMUM ESSENTIAL EMERGENCY COMMUNICATIONS NETWORK (ME	35,634	634	-35,000
MILSTAR SATELLITE COMMUNICATIONS SYSTEM (AF TERMINALS)	973,182	873,182	-100,000
UHF SATELLITE COMMUNICATIONS...........................	11,457	---	-11,457
ARMS CONTROL IMPLEMENTATION............................	7,107	4,107	-3,000
WESTERN SPACE LAUNCH FACILITY (WSLF)...................	9,546	9,546	---
EASTERN SPACE LAUNCH FACILITY (ESLF)...................	41,242	41,242	---
IMPROVED SPACE BASED TW/AA.............................	214,794	214,794	---
NCMC - TW/AA SYSTEM....................................	141,841	141,841	---
BALLISTIC MISSILE EARLY WARNING SYSTEM (BMEWS)........	500	500	---
SPACETRACK...	45,246	45,246	---
DEFENSE SUPPORT PROGRAM................................	86,777	86,777	---
NUDET DETECTION SYSTEM.................................	9,306	8,306	-1,000
CLASSIFIED PROGRAMS....................................	297,200	297,200	---
KC-135S..	20,811	3,441	-17,370
TOTAL, STRATEGIC PROGRAMS..............................	2,986,306	2,839,503	-146,803

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
TACTICAL PROGRAMS			
INTELLIGENCE ADVANCED DEVELOPMENT	6,134	6,134	---
AIR BASE OPERABILITY ADVANCED DEVELOPMENT	3,739	3,739	---
COMMAND, CONTROL, AND COMMUNICATION APPLICATIONS	9,395	3,395	-6,000
DOD PHYSICAL SECURITY EQUIPMENT - EXTERIOR	2,971	2,971	---
COMBAT IDENTIFICATION TECHNOLOGY	28,759	28,759	---
AIRCRAFT AVIONICS EQUIPMENT DEVELOPMENT	6,637	6,637	---
AIRCRAFT EQUIPMENT DEVELOPMENT	1,532	1,532	---
ENGINE MODEL DERIVATIVE PROGRAM (EMDP)	863	863	---
NUCLEAR WEAPONS SUPPORT	5,475	5,475	---
C-17 PROGRAM	179,799	154,799	-25,000
SPECIALIZED UNDERGRADUATE PILOT TRAINING	36,835	5,596	-31,239
VARIABLE STABILITY IN-FLIGHT SIMULATOR TEST AIRCRAFT	5,836	5,836	---
F-22 EMD	2,250,997	2,250,997	---
ADVANCED INTERDICTION AFT (AX)	3,835	---	-3,835
NIGHT/PRECISION ATTACK	82,210	---	-82,210
AIRCRAFT ENGINE COMPONENT IMPROVEMENT PROGRAM	102,704	102,704	---
EW DEVELOPMENT	143,433	143,433	---
JOINT TACTICAL FUSION PROGRAM	4,221	2,221	-2,000
CHEMICAL/BIOLOGICAL DEFENSE EQUIPMENT	9,874	9,874	---
ARMAMENT/ORDNANCE DEVELOPMENT	11,407	11,407	---
SUBMUNITIONS	3,835	3,835	---
AIR BASE OPERABILITY	11,023	11,023	---
JOINT DIRECT ATTACK MUNITION	87,822	87,822	---
AEROMEDICAL/CHEMICAL DEFENSE SYSTEMS	10,260	10,260	---
COMMON SUPPORT EQUIPMENT DEVELOPMENT	4,793	4,793	---
LIFE SUPPORT SYSTEMS	11,024	11,024	---
CIVIL, FIRE, ENVIRONMENTAL, SHELTER ENGINEERING	4,524	4,524	---
JOINT STANDOFF WEAPONS SYSTEMS	24,814	24,614	---
SURFACE DEFENSE SUPPRESSION	1,917	1,817	---
COMPUTER RESOURCE TECHNOLOGY TRANSITION (CRTT)	7,137	16,137	+9,000
INTELLIGENCE EQUIPMENT	2,875	2,875	---
JOINT TACTICAL INFORMATION DISTRIBUTION SYSTEM (JTIDS)	15,113	15,113	---
JOINT SURVEILLANCE/TARGET ATTACK RADAR SYSTEM (JSTARS)	295,228	295,228	---
JOINT INTEROPERABILITY OF TACTICAL COMMAND & CONTROL S	4,793	4,793	---
F-111 SQUADRONS	25,679	25,679	---
F-16 SQUADRONS	116,947	76,947	-40,000
F-15E SQUADRONS	91,497	66,497	-25,000
MANNED DESTRUCTIVE SUPPRESSION	20,486	15,486	-5,000
F-117A SQUADRONS	6,778	6,778	---
TACTICAL AIM MISSILES	33,867	---	-33,867
ADVANCED MEDIUM RANGE AIR-TO-AIR MISSILE (AMRAAM)	69,785	54,785	-15,000
FOLLOW-ON TACTICAL RECONNAISSANCE SYSTEM	65,336	17,849	-47,589
AF TENCAP	14,722	4,722	-10,000
SPECIAL EVALUATION PROGRAM	120,711	120,711	---
OVERSEAS AIR WEAPON CONTROL SYSTEM	19,570	19,570	---
TACTICAL AIR CONTROL SYSTEMS	28,913	28,913	---
AIRBORNE WARNING AND CONTROL SYSTEM (AWACS)	67,066	87,066	---
ADVANCED COMMUNICATIONS SYSTEMS	478	478	---
EVALUATION AND ANALYSIS PROGRAM	75,384	75,384	---
ADVANCED PROGRAM TECHNOLOGY	148,114	162,914	+14,800
THEATER BATTLE MANAGEMENT (TBM) C4I	12,518	12,518	---
ADVANCED SYSTEMS IMPROVEMENTS	129,164	129,164	---
SEEK EAGLE	15,171	15,171	---
ADVANCED PROGRAM EVALUATION	89,604	89,604	---
MISSION PLANNING SYSTEMS	24,249	24,249	---
SATELLITE COMMUNICATIONS TERMINALS	1,399	1,399	---
NATIONAL AIRSPACE SYSTEM (NAS) PLAN	18,773	12,773	-6,000
CONSTANT SOURCE	3,245	3,245	---
ELECTRONIC COMBAT INTELLIGENCE SUPPORT	2,004	2,004	---
MAC COMMAND AND CONTROL SYSTEM	11,361	11,361	---
CLASSIFIED PROGRAMS	295,395	27,320	-268,075
TOTAL, TACTICAL PROGRAMS	4,910,864	4,333,729	-577,135
INTELLIGENCE & COMMUNICATIONS			
DEFENSE SATELLITE COMMUNICATIONS SYSTEM	25,522	20,522	-5,000
INFORMATION SYSTEMS SECURITY PROGRAM	15,416	16,916	+1,500
ELECTROMAGNETIC COMPATIBILITY ANALYSIS CENTER (ECAC)	9,978	9,978	---
AIR TRAFFIC CONTROL, APPROACH, AND LANDING SYSTEM (ATC	9,304	9,304	---
NAVSTAR GLOBAL POSITIONING SYSTEM (USER EQUIPMENT)	16,164	16,164	---
NAVSTAR GLOBAL POSITIONING SYSTEM (SPACE AND CONTROL S	38,990	36,990	---
CLASSIFIED PROGRAMS	2,175,965	2,203,524	+27,559
TOTAL, INTELLIGENCE & COMMUNICATIONS	2,291,341	2,315,400	+24,059
DEFENSEWIDE MISSION SUPPORT			
SPACE TEST PROGRAM	50,465	45,465	-5,000
SATELLITE SYSTEMS SURVIVABILITY	10,732	3,732	-7,000
TRAINING SYSTEMS DEVELOPMENT	30,015	20,015	-10,000
MANPOWER, PERSONNEL AND TRAINING DEVELOPMENT	4,838	4,838	---
THREAT SIMULATOR DEVELOPMENT	34,362	46,962	+12,600
TARGET SYSTEMS DEVELOPMENT	10,154	10,154	---
NATIONAL LAUNCH SYSTEM	53,906	53,906	---
R&M MATURATION/TECHNOLOGY INSERTION	20,593	20,593	---
WEATHER SYSTEMS - ENG DEV	9,379	9,379	---
RANGE IMPROVEMENT	15,714	15,714	---
MAJOR T&E INVESTMENT	55,799	55,799	---

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
RAND PROJECT AIR FORCE	26,749	26,749	---
RANCH HAND II EPIDEMIOLOGY STUDY	3,707	3,707	---
NAVIGATION/RADAR/SLED TRACK TEST SUPPORT	28,313	31,813	+3,500
INITIAL OPERATIONAL TEST & EVALUATION	32,811	32,811	---
TEST AND EVALUATION SUPPORT	390,930	390,930	---
DEVELOPMENT PLANNING	9,796	9,796	---
ENVIRONMENTAL COMPLIANCE	39,575	39,575	---
RDT&E AIRCRAFT SUPPORT	42,157	42,157	---
MINOR CONSTRUCTION (RPM) - RDT&E	7,736	7,736	---
MAINTENANCE AND REPAIR (RPM) - RDT&E	46,020	46,020	---
BASE OPERATIONS - RDT&E	121,974	121,974	---
USAF WARGAMING AND SIMULATION	11,573	11,573	---
SATELLITE CONTROL NETWORK	110,164	110,164	---
MEDIUM LAUNCH VEHICLES	58,502	99,838	+41,336
UPPER STAGE SPACE VEHICLES	4,141	4,141	---
TITAN SPACE LAUNCH VEHICLES	330,740	336,740	+6,000
DEFENSE METEOROLOGICAL SATELLITE PROGRAM (DMSP)	31,963	21,963	-10,000
DEPOT MAINTENANCE (NON-IF)	1,830	1,830	---
MANUFACTURING TECHNOLOGY DEVELOPMENT	---	130,000	+130,000
LOGISTICS SUPPORT ACTIVITIES	6,336	6,336	---
PRODUCTIVITY, RELIABILITY, AVAILABILITY, MAINTAIN. PRO	18,068	18,068	---
POLLUTION PREVENTION	25,518	25,518	---
CRYPTOLOGIC/SIGINT-RELATED SKILL TRAINING	1,926	1,926	---
CIVILIAN COMPENSATION PROGRAM	5,775	5,775	---
CONTRACT ADMINISTRATION/AUDIT	243,178	---	-243,178
INTERNATIONAL ACTIVITIES	3,820	3,820	---
OVERHEAD	---	-180,000	-180,000
TOTAL, DEFENSEWIDE MISSION SUPPORT	1,908,250	1,646,508	-261,742
TOTAL, RESEARCH DEVEOPMENT TEST & EVAL AF	13,094,984	12,008,985	-1,085,999

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

Appropriations, 1993	$9,799,911,000
New obligational authority, 1994:	
Estimate	10,174,549,000
Recommended	9,526,918,000
Decrease	647,631,000

This appropriation funds the Research, Development, Test and Evaluation activities of the Defense Agencies.

COMMITTEE RECOMMENDATIONS

AUTHORIZATION CHANGES

The Committee recommends the following changes, in accordance with authorization action:

[In thousands of dollars]

	Request	HASC	HAC	Change
University Research Initiatives	242,611	274,611	274,611	+32,000
Historically Black Colleges/Universities	0	15,000	15,000	+15,000
Integrated Command and Control Technology	57,214	125,014	125,014	+67,800
Dual Use Partnerships	324,000	624,000	624,000	+300,000
Manufacturing Technology	147,733	0	0	−147,733
Focus Hope	0	20,000	20,000	+20,000
Cooperative DOD/VA Medical Research	0	30,000	30,000	+30,000
Space Energy Laser Program (SELENE)	0	5,000	5,000	+5,000

UNIVERSITY RESEARCH INITIATIVES (0601103D)

The Department requested $242,611,000 for university research initiatives. The Committee recommends $274,611,000, an increase of $32,000,000 as recommended by the House Armed Services Committee in its 1994 bill. Within this amount, $55,000,000 is only for Augmentation Awards for Science and Education Training and $20,000,000 is only for an Experimental Program to Stimulate Competitive Research (EPSCOR) in the Department of Defense. Concerning the latter, the Committee has included bill language requiring participation by all States as of the date of enactment of the Act eligible for the National Science Foundation EPSCOR program. The Committee still expects the Department to follow guidelines for the fiscal year 1993 program as set forth in last year's conference agreement. For fiscal year 1994, the Secretary should continue to work closely with the director of the National Science Foundation and states previously designated as eligible to participate in DEPSCoR. Objectives should be to identify research programs, develop comprehensive improvement plans to address these barriers, and, following merit review procedures, implement improvement plans that focus on strengthening infrastructure, research enhancement, and human resources development. The Committee has also included bill language earmarking $15,000,000 for a competitive program with Historically Black Colleges and Universities aimed at alleviating minority scientist/engineer shortfalls.

FOCUSED RESEARCH INITIATIVE (0601110D)

The Department requested $29,472,000 to initiate a new program to better focus the Department's research through larger, integrated, collaborative efforts. The Committee recommends $20,000,000, a reduction of $9,472,000 due to fiscal constraints. The Committee believes that a high priority should be afforded to medical technology within this initiative. The Committee therefore recommends that within the amount provided, $10,000,000 is only for projects undertaken in conjunction with the National Medical Technology Testbed to provide seed funds for developing products for defense technologies in health care, aimed at reducing health-care costs. Such technologies, once developed, could provide savings to both the Defense Department and the private sector.

SUPERCONDUCTIVE MAGNETIC ENERGY STORAGE (0602109H)

The Department requested no funds to continue development of superconductive magnetic energy storage (SMES). An urgent need exists for the development of an inventory of credible Superconducting Magnetic Energy Storage (SMES) case studies that will provide utility decision makers with knowledge of the benefits SMES could realize under the specific conditions of their individual systems. Such knowledge would encourage individual utilities to commit more tangible support to development of the technology and would provide potential vendors and manufacturers of SMES systems with a vision of the future utility market for large scale SMES. Therefore, the Committee directs the Science Advisory Committee on SMES to conduct a series of SMES case studies. The studies would map the cost-effective application of Nuclear Energy Regulatory Commission nationwide. These studies are to be organized to inventory potentially viable SMES applications in each Nuclear Energy Regulatory Commission region of the country and would quantify and compare SMES benefits and costs in each case. The Electric Power Research Institute is currently supporting an effort of this kind in the West Coast region which could be used as prototype research.

COMPUTING SYSTEMS AND COMMUNICATIONS TECHNOLOGY (0602301E)

ARPA requested $368,589,000 for computing systems and communications technology. The Committee recommends $272,789,000, a reduction of $95,800,000. This includes: a reduction of $100,000,000 to the High Performance Computing initiative due to fiscal constraints; an increase of $7,000,000 only for ASSET; a reduction totalling $7,500,000 for seismic research as discussed below; and a total of $6,400,000, an increase of $4,700,000, only for development of non-seismic technology for nuclear non-proliferation—including nuclear radiation detection and imaging, analytical data automation, and detection of trace evidence of nuclear weapons development, as well as joint nuclear non-proliferation projects with scientific and engineering groups in the Former Soviet Union. Of the funds provided for high performance computing, $6,500,000 is only for the very high performance shared memory MIMD computer.

The Committee understands there is significant concern in the high performance computing industry that Department research and procurement policies have favored a limited number of producers while excluding most of the industry from placement in DOD laboratories. These concerns were recently validated by the General Accounting Office, which found that only two companies have received almost all procurement contracts, most under non-competitive procedures. The Committee is also concerned that the Department has ignored previous Congressional directives to allocate research funds to each of the two competing computer architectures. The Committee urges the Department to implement the General Accounting Office's recommendations on HPCI procurements, and recommends bill language addressing these problems.

SEISMIC MONITORING

The Committee is concerned about the Advanced Research Projects Agency's continued failure to transfer responsibility for mature seismic monitoring technology to cooperating agencies. ARPA, as its name implies, should focus its efforts on *advanced* research, not the deployment of minor improvements in current technologies or support for international treaty negotiations. The Committee, therefore, recommends denial of $5,500,000 requested for technical support of international negotiations on nuclear testing and monitoring system demonstration, as well as $2,000,000 requested for installation of prototype seismic stations in the Middle East, begun in fiscal year 1993 with funds obligated contrary to Congressional directive. The Committee would consider a request to shift these funds to a service or operating agency.

TACTICAL TECHNOLOGY (0602702E)

ARPA requested $143,891,000 for tactical technology. The Committee recommends $156,541,000, an increase $12,650,000 of which $1,750,000 is only for an advanced landing system, $5,500,000 is only for metal-coated ceramic microsphere technology for low observable applications, and $5,400,000 is only for the Speakeasy communications project.

Small-Low Cost-Interceptor-Device (SLID): **The Committee approves the budget request of $6,000,000 for the Small-Low Cost-Interceptor-Device (SLID), and directs the transfer of $6,500,000 of prior year funds from program element 0602618A, Ballistic Technology, task AH–81, for a total of $12,500,000 for the SLID program.**

INTEGRATED COMMAND AND CONTROL TECHNOLOGY (0602708E)

ARPA requested $57,214,000 for integrated command and control technology. The Committee recommends $125,014,000, an increase of $67,800,000 as recommended by the House Armed Services Committee in its 1994 bill. Within this amount, $25,000,000 is only for part of a two year, $50,000,000 project to establish a pilot demonstration facility that will expedite the development of manufacturing technology for active matrix liquid crystal displays (AMLCDs).

MATERIALS AND ELECTRONICS TECHNOLOGY (0602712E)

ARPA requested $198,502,000 for materials and electronics technology. The Committee recommends $303,200,000, an increase of $104,700,000. This includes increases only for the following purposes: $77,700,000 as recommended by the House Armed Services Committee in its 1994 bill, $9,500,000 only for infrared sensitive materials, $13,500,000 only for the Joint Casting Emission Reduction Project, and $4,000,000 only for multi-chip modules. Within the amount provided, $5,000,000 is only to continue the coal utilization center and $2,700,000 is only to establish a materials research program to address scientific advances through cross-disciplinary activities and potential breakthroughs in the following areas including high performance materials, electro-optical materials, and catalysis. The program should address: long-lasting catalysts for nerve gas destruction, for other hazardous and toxic substances, and for other environmental problems; novel polymer processing, employing the shearing of binary blends undergoing a phase transition to obtain improved mechanical properties; theoretical modeling using supercomputers to develop new synthesis and processing methods to improve adhesion and strengthening of polymers and composites; switchable laser eye protection devices using new smart materials fabricated from self-assembling crystalline colloidal arrays also useful for optical switching devices; new optical multiquantum-cell switching devices and synthesis of new nonlinear materials developed from new metallo-organic non-linear materials; examination and control of diamond film growth by the development of UV Raman spectroscopy as an in-situ diagnostic technique; the mechanisms of degradation of diamond films due to extreme thermal and chemical environments in order to develop new durable coatings; improvement of the durability and the environmental resistance of new superalloys and other advanced metallic alloys, composites and semiconductors against degradation in aggressive high temperature environments; and collaborative dual-use research and development programs in the foregoing areas.

The Committee has been made aware of the recent formalization of a Joint Casting Emission Reduction Project between the United States Council for Automotive Research (USCAR), the California Office of Research and Technology Application (CA ORTA), and the Advanced Manufacturing Technology Center at McClellan AFB to develop low emission foundry and metal casting materials, processes, and facilities. The Committee understands that the technologies to be developed by this joint project are critical to creating casting and foundry processes which can meet Clean Air Act standards by 1996. Such processes are used extensively in the United States automotive industry and support $30 billion in economic activity and over 300,000 domestic jobs. The resultant technologies will provide the domestic metal working industry and the automotive industry with an organic capability that does not exist today. The Joint Casting Emission Reduction project therefore will play a key role in developing technologies that are needed to maintain and improve our nation's defense industrial capabilities as well as our general industrial competitiveness in the future. With these factors in mind, the Committee has provided an additional

$13,500,000 only for the California ORTA Foundation as the first increment in support of the Joint Casting Emission Reduction project, which is projected to be completed over a five year period for $40,000,000. This funding is available to support all project activities including the purchase of equipment, the design and manufacture of equipment including low level emissions testing equipment and devices, personnel support, contractor support, and minor renovation of facilities. Further, the Committee recommends the use of agency sponsored cooperative research and development agreements where needed to support project activities.

The fiscal year 1994 ARPA materials program includes a new initiative to develop a metal matrix composite—a high temperature material that could provide a significant performance capability by reducing fuel consumption in jet engines. This material would enable lower cost operation and provide extended flight times in military aircraft. It also is applicable to commercial engine production. The Committee endorses this type of dual use effort that benefits both the military and commercial requirements while improving our manufacturing infrastructure.

DEFENSE NUCLEAR AGENCY (0602715H)

The Defense Nuclear Agency requested $288,388,000. The Committee recommends $238,388,000, a reduction of $50,000,000. This includes a general reduction of $57,000,000 in nuclear testing costs, an increase of $4,000,000 only for ongoing bioenvironmental hazards research, and $3,000,000 only for the Nevada operations office for evaluating and assisting the transfer of technologies developed at the Nevada Test Site to the private sector, development of infrastructure to support future defense program needs at the Nevada Test Site, and environmental aspects of new or proposed projects seeking to locate at the Test Site.

The Committee has increased funding by $4,000,000 and directs the Defense Nuclear Agency to continue its ongoing high risk interdisciplinary bioenvironmental hazards research into the health, engineering and basic science aspects of environmental problems of special interest to the Department. This collaborative research program, which is intended to develop better understanding and mitigation methods for the effects environmental pollutants have on human health and ecological systems, is to utilize existing established cooperative programs. The Committee directs the Department to budget for this research in fiscal year 1995 and beyond.

DOD SOFTWARE TECHNOLOGY INITIATIVE (0602756D)

The Department requested $43,304,000 to initiate a new software initiative. The Committee notes that the Department has been unable, primarily for bureaucratic reasons, to publish a software master plan for a number of years. The Committee is unwilling to invest in new initiatives until this fundamental management issue has been satisfactorily resolved, and therefore recommends that the request for these funds be denied.

SOFTWARE REUSE

DOD estimates that expenditures for developing and maintaining software for its weapon systems, command and control, and administrative systems exceed $24 billion annually. Software reuse provides an important opportunity to leverage this investment by offering potentially substantial cost savings and improvements in reliability and maintainability. This potential has already been demonstrated in industry and on the Navy's Restructured Naval Tactical Data System. Additionally, the Army expects significant benefits from the use of this technology in its Army Tactical Command and Control System program. In December a 1991 study, Defense determined that software reuse was the number one technique to reduce the Department's software costs. For example, the study estimated that in fiscal year 1994 reuse could help Defense save $1 billion of an estimated $24 billion in software expenditures.

Although software reuse potential is significant, software experts caution that technical, organizational, and legal issues must be resolved to attain its full benefit. To address these issues, Defense has established its Software Reuse initiative. The Defense initiative, with a steering committee and working groups, has developed a high-level vision and strategy and has identified an approach for software reuse.

While Defense's initiative has made some progress toward implementing a software reuse capability in the Department, continuing with its current approach makes achieving the full benefit of reuse uncertain. Specifically, Defense has brought together a collection of organizations to participate in the initiative, which has fostered a cooperative environment, but none of them have the authority or clout government and industry experts agree is needed to implement the initiative. As such, Defense can not effectively manage and oversee the initiative and does not know how much has been spent on, funding and resources required for, and status of the various reuse efforts within the federation of programs and throughout the entire Department.

Additionally, Defense has not properly identified the high priority reuse opportunities and associated obstacles or assessed the software development and maintenance processes in these areas to determine their capability for reuse practice as government and industry experts agree is needed. Therefore, the Department, with its decentralized approach, runs the risk of permitting the many organizations participating in the reuse initiatives to misdirect or duplicate reuse effort.

Further, while the Department will centrally prepare several plans for its reuse initiative, these plans currently will not be comprehensive or based on an assessment to identify the high priority reuse activity areas. Implementing software reuse will require a number of fundamental changes in the way the Department plans, develops and maintains software that will need to be coordinated. Government and industry experts state that a comprehensive plan targeting high priority reuse activities is critical to the Department's effort to successfully implement its reuse initiative.

Numerous GAO and Defense studies have highlighted the Department's software management problems. Though the Depart-

ment, since 1990, has prepared several plans to address these problems from a DOD-wide perspective, Defense has not finalized one of them and continues to work the problems in a fragmented manner, as illustrated by its approach for software reuse.

In light of these concerns, the Committee directs the Department to establish a more formal program for this initiative, addressing the above concerns on central management and oversight, program scope and direction, and transition plans. Additionally, the Committee directs the Department to provide a plan, which discusses how Defense plans to reorganize the initiative and address these concerns. The Department shall submit this plan to the Committee by March 1, 1994.

BALLISTIC MISSILE DEFENSE

The Department requested $3,637,135,000 for Ballistic Missile Defense research and development programs. The Committee recommends $2,870,040,000 for the Ballistic Missile Defense Organization's programs, a reduction of $767,095,000. This recommendation includes reductions proposed by the House Armed Services Committee in its 1994 bill, except that funding for the Brilliant Eyes program has been retained within this program. As noted elsewhere in this report, the Committee recommends a general reduction to space programs rather than to consolidate a number of DOD space programs in a single line item. The Committee has also included bill language to earmark $97,000,000 only for the ERINT missile and to require that the Defense Department execute the PAC–III missile acquisition strategy which it justified to the Congress during hearings this year. The Committee directs that $6,500,000 of theater missile defense funds are only for the classified HAVE YAK program. The Committee has also included bill language preventing the expenditure of funds on more than one public affairs office within the Washington, D.C. area with attendant cost savings of over $500,000 annually.

The Ballistic Missile Defense Organization requested $22,464,000 for Follow-On Technologies. Included in this program element is development of an unmanned aircraft (RAPTOR) that will serve as a host platform for a missile (TALON) to detect and destroy hostile theater-launched missiles. The Committee is concerned that the BMDO will spend several hundred mission dollars to develop and deploy such a system at a time then the Defense Department and the intelligence community have terminated other highly capable unmanned aerial vehicles. The Committee is, therefore, directing that no funds provided to BMDO are available for any UAV programs without the specific prior approval of the House Committee on Appropriations.

The BMDO funded, Navy-managed Terrier/LEAP [Lightweight ExoAtmospheric Projectile] flight test program is intended to demonstrate the feasibility of the Navy Upper Tier concept for Theater Ballistic Missile Defense, and specifically, the application of LEAP technology. The LEAP program has developed configurations with solid divert propulsion and others with hypergolic, or liquid propulsion. While one of the LEAP contractors has already demonstrated the maturity of solid divert propulsion by successfully hovering its test vehicles, BMDO has directed a second contractor to do the

same. In view of the DOD safety requirement that hypergolic fuels not be stored aboard Naval ships, the solid propulsion LEAP systems appear to better meet the needs of the Navy. Accordingly, the Secretary of Defense, acting through the Director of BMDO and the Secretary of the Navy, is directed to ensure that the Terrier/LEAP flight test program includes flight tests incorporating the two alternative solid propulsion LEAP vehicles. The solid propulsion LEAP contractors should begin Terrier/LEAP integration work in FY94 with the objective of completing flight tests in FY95.

MEDICAL ADVANCED TECHNOLOGY (0603002D)

The Department requested $4,701,000 for medical advanced technology. The Committee recommends $11,001,000, an increase of $6,300,000 as explained in the medical section of this report.

EXPERIMENTAL EVALUATION OF MAJOR INNOVATIVE TECHNOLOGY (0603226E)

ARPA requested $512,198,000 for EEMIT. The Committee recommends $617,098,000, an increase of $104,900,000. This includes the following increases recommended by the House Armed Services Committee in its 1994 bill: $50,000,000 for fuel cells, $28,900,000 for programs transferred from the Ballistic Missile Defense Organization; $5,000,000 for gamma-gamma resonance imaging; $1,000,000 for fire detection technology; and $1,000,000 for nuclear waste monitoring. The Committee also recommends increases only for following purposes: $16,000,000 for multi function self aligned gate gallium arsenide wideband module development for shipboard radar and electronic warfare use; $6,000,000 only for critical technology validation of the ASTOVL direct lift concept; $3,000,000 is only for the Large Millimeter Telescope; $5,000,000 only for SELENE as recommended by the House Armed Services Committee in its fiscal year 1994 report; and $4,000,000 only for unmanned undersea vehicle solid polymer fuel cells. Concerning fuel cells: $5,000,000 is only for phosphoric acid fuel cells to be managed in conjunction with the Army; $5,000,000 is only for proton exchange membrane fuel cells; $1,000,000 is only for monolithic solid oxide fuel cells; and $34,500,000 is only for carbonate based fuel cells.

A reduction of $15,000,000 to the CAMEO project is also recommended. Concerning ASTOVL, the committee recognizes the importance of developing lift technologies. The Committee is pleased with ARPA incorporating the conventional takeoff and landing concepts into the ASTOVL program. Concerning medical technology, ARPA is initiating a fiscal year 1994 military medical program to introduce high technology solutions to battlefield trauma care. This program will have significant dual-use benefits toward improving civilian health care, and the Committee strongly supports this initiative.

DEEP OCEAN RELOCATION

The Committee is concerned about two different but related problems, the recognized presence of contaminated sediments in the vicinity of military marine facilities and the contaminated harbors

and coastal areas surrounding the United States. Technologies exist that could be adapted for disposal of the sediments by relocating them to the deep ocean, thus isolating them from the biota of the upper ocean waters that support our marine food chain. Technologies supporting the means for safely cleaning up the coastal environment may be described as deep ocean relocation or isolation.

The committee believes that a project demonstrating and validating the technology to safely and economically relocate sediments to the deep ocean should be undertaken. The committee also believes that multiple alternative technologies for transportation and emplacement should be investigated to identify the most cost-effective safe means of sediment relocation. Other nations have similar coastal environmental problems, and the solution to this problem is of international economic value.

Accordingly, the committee directs the DOD through its ARPA Marine Systems Technology office to study the concept of deep ocean relocation or isolation of sedimentary material. The committee is as vitally concerned with protecting the ocean environment as with demonstrating an economical solution to the contaminated sediment problem. To this end, the committee believes that a future program should be of sufficient scientific and technical integrity to fully demonstrate the benefits, risks, and economics of deep ocean relocation, and should be conducted with minimal environmental risk. The committee believes that the magnitude of the contaminated sediment problem is such as to attract private sector investment once the scientific and technical viability and safety is demonstrated, leading eventually to a commercial industrial base for cleanup of the coastal waters of the United States and other countries.

ADVANCED SUBMARINE TECHNOLOGY (0603569E)

The Committee recommends that these funds be transferred to the next program.

ADVANCED MARITIME TECHNOLOGY

The Committee recommends a new program for ARPA maritime systems funded at $190,556,000. This includes $32,556,000 transferred from the Advanced Submarine Technology program, $100,000,000 for the National Shipbuilding Initiative as recommended by the House Armed Services Committee in its 1994 bill, $20,000,000 for Ocean Reconfigurable Craft—Advanced, $15,000,000 for ship self-defense, $15,000,000 for advanced ship propulsion, and a total of $10,000,000 only for active structural control.

MANUFACTURING TECHNOLOGY (0603705D)

The Committee does not agree to the Defense Department's proposal to consolidate service manufacturing technology accounts at the OSD level, and consequently recommends that no funds be provided for that purpose.

STRATEGIC ENVIRONMENTAL RESEARCH (0603716D)

The Department requested $97,958,000 for strategic environmental research and development. The Committee recommends $67,958,000, a reduction of $30,000,000 due to fiscal constraints. The Committee directs that full funding of phase I and II programs approved by the SERDP Science Advisory Board be continued. Within the amount provided, $5,000,000 is only for the Consortium for International Earth Science Informational Network; $2,200,000 is only for Global Acoustic Mapping of Ocean Temperatures; $7,500,000 is only for a plasma-disposal project at Fort Belvoir; $3,500,000 is only for the National Environmental Education and Training Center; $1,400,000 is only for a spectrometer air quality monitor; $100,000 is only for encapsulation of solid waste; and a total of $37,800,000 is for Phase I projects.

The Committee has a longstanding concern with the slow pace of progress in remediation of environmentally polluted sites on military installations. In order to identify means to expedite this process, the Congress has in the past directed demonstrations for use of innovative approaches. The Department is now conducting several such demonstrations at installations slated for closure. However, these demonstrations have not specifically focused on the application of new technologies that could provide more cost-effective and prompt remediation actions. Therefore, the Committee directs the Department to conduct one or more demonstrations specifically focused on providing a demonstration case study of the application of emerging new technologies in environmental remediation. Such a study would have the added benefit of demonstrating potential application of new technologies to other government entities and the private sector. The Department should focus the demonstration in an area where there are multiple on-going military installations covering the full range of the military services to assure maximum input and exposure to the benefits of the demonstration.

The Committee believes that there is a requirement to begin a comprehensive effort in training, education, workforce development, and related research and development to increase the Nation's capability to carry out environmental cleanup work at defense-related and other hazardous waste sites in a safe and effective manner. Therefore, the Committee recommends that $3,500,000 be made available only to the National Environmental Education and Training Center for research, planning and demonstration purposes of the Center, the primary purpose of which is to bring together academia, government, labor and management in a cooperative venture to develop and operate a program for the education and training of the Nation's environmental restoration and remediation workforce.

With the major reductions occurring in military spending, the imminent deactivation of many military bases, and the requirement to remediate existing hazardous waste on many of those sites, it is timely to consider various cost effective options to accomplish this goal. The Committee believes that many of the small and medium businesses can contribute to the technology being developed in the SERDP program. The Committee therefore recommends that 20% of the SERDP resources be made available for small and me-

dium size defense related companies to demonstrate their technologies for environmental applications.

COMPUTER AIDED LOGISTICS SUPPORT (0603736D)

The Department requested $10,424,000 for computer aided logistics support. The Committee recommends $23,224,000, an increase of $12,800,000. Within the amount provided, $2,800,000 is only for development of a CALS-compliant Standardized Product Description. Another $5,000,000 is only for the Defense Department to develop a plan that sets forth a clear articulation of vision, strategy, and tactics for implementation of the CALS program. The implementation of this plan should accelerate the program within the Department and provide an articulation of standards, architecture validation, infrastructure development, and incentives for both DOD systems program managers and United States industry. The tasks outlined in the plan to be implemented with these funds will include but are not limited to: establishing a cost effective compressed digital video distance learning network to promulgate CALS information and standards, processes and incentives; conducting a CALS business case and functional economic analysis model of selected pilot DOD and federal programs; conducting architectural validation and infrastructure development; and developing a computer assisted training course for the model and providing training for such model. The Committee directs that the Navy afford priority to existing, skilled 8(a) firms when allocating funds for this project.

The Committee also recommends $5,000,000 only to accelerate the CALS program within the Defense Department and United States industry. The Committee has noted progress including the realignment of the CALS Executive under the Undersecretary of Defense for Acquisition and Technology and recommends the creation, implementation and management of the Defense CALS support to industry. This initiative is to facilitate bridging the gap between DOD and industry. Specific tasks will include, but not be limited to, development, modeling, and prototyping of CALS DOD-to-industry implementation. The models developed and prototyped will include: the relationship between DOD and other Government agencies for commercial implementation of CALS; creating a format to facilitate government and industry coordination; and initiating and managing various task forces comprised of government and business leaders to blend CALS technologies and methodologies into the commercial acquisition environment. The Committee directs that these funds be controlled and managed by the Defense CALS executive.

MANUFACTURING TECHNOLOGY (0603739E)

The Department requested $299,597,000 for manufacturing technology. The Committee recommends $342,340,000, an increase of $42,743,000. This includes an increase of $27,543,000 recommended by the House Armed Services Committee in its 1994 bill for advanced lithography, an increase of $20,000,000 only for a cost-shared, cooperative effort with industry to develop environmentally conscious manufacturing of electronics systems based on an industry-developed roadmap, and a reduction of $4,800,000 to

transfer funds for Focus Hope to a separate line item. Within the amount provided for advanced lithography, $2,200,000 is only for coronary angiography and $3,000,000 is only for dual energy digital subtraction angiography.

SEMATECH

The Department requested funds for SEMATECH in another line. The Committee recommends that these funds be accounted for in its own unique line item. The Committee recommends $90,000,000, the amount requested in the budget.

SEMICONDUCTOR MANUFACTURING TECHNOLOGY (0603745E)

The Department requested $100,000,000 for semiconductor manufacturing technology. The Committee recommends $10,000,000, a reduction of $90,000,000 to transfer SEMATECH funds to a separate line.

HIGH PERFORMANCE COMPUTING MODERNIZATION PROGRAM (0603755D)

The Department requested $122,819,000 to acquire supercomputers for its research laboratories. The Committee recommends that no funds be provided in this title, but has included an equal amount in the Procurement, Defense-wide appropriation.

CONSOLIDATED DOD SOFTWARE INITIATIVE (0603756D)

The Department requested $9,151,000 for the consolidated DOD software initiative. The Committee recommends $31,651,000, an increase of $22,500,000 of which $10,000,000 is only for the National Applied Software Engineering Center; $5,000,000 is only for the Software Managers' Network; and $7,500,000 is only for the Reuse Technology Adoption Program. The Committee directs that the 1994 level of effort for the National Applied Software Engineering Center should be continued in the fiscal year 1995 budget request to Congress.

ROCKET MOTOR DEMILITARIZATION PROGRAM (0604704D)

The Department requested $12,267,000 for rocket motor demilitarization. The Committee recommends $27,267,000, an increase of $15,000,000 of which $6,000,000 is only for disposal of energetic materials and $7,000,000 is only for disposal of strategic missiles at the Nevada Test Site, and $2,000,000 is only for projects at the Longhorn Army Ammunition Plant to include design, test, and process prove-out for demil/reclamation of rocket motor propellant and pyrotechnic material using cryofractured, high pressure wash out and air curtain destructors and other technologies that are under development.

DOD/CTC JOINT CALS INITIATIVE

The mission of the Computer aided Acquisition and Logistics Support (CALS) Shared Resource Center (CSRC) program is to improve the technical and competitive posture of the United States industrial base by advancing and promoting the adoption of CALS standards and technologies in Government and industry. This is to be accomplished though the establishment and operation of a net-

work of full-service CSRC Regional Satellites (CRSs) that will serve the local industrial and technology base, thereby leveraging existing government, industry, and academic resources and capabilities. This is a critical step toward fully realizing the primary goal of defense conversion, which is to transition defense technologies to the domestic, nondefense sector.

To carry out these initiatives, in fiscal year 1991, Congress provided $4,000,000 in earmarked funds only for the establishment of the original CSRC and the first CSRC Regional Satellite as the prototype for the CRSs. In fiscal year 1992, Congress provided $7,000,000 in earmarked funds only for the continued establishment and operation of the CSRC and the CRS and for the establishment of the second CRS located in Palestine, Texas. In fiscal year 1993, Congress provided $46,000,000 in earmarked funds only for the continued establishment and operation of the CSRC and the CRSs and for the establishment of additional CRSs located in Orange, Texas; San Antonio, Texas; Dayton, Ohio; Cleveland, Ohio; and Fairfax, Virginia.

Since the original legislation in fiscal year 1991, the CSRC program has been developed and operated by the Air Force on a very limited scale, but the Air Force has repeatedly altered Congressional intent in the implementation of the CSRC program, including most noticeably the Air Force's repeated refusal to (1) establish the CSRC as the Department's tri-service CALS standards and technologies development, deployment, training and education hub of the CSRC program, and (2) ensure that the CRSs are established and operated only by educational or other nonprofit institutions. In addition, the Air Force has not established, as directed by Congress, a full-service CRS in Palestine, Texas but instead redirected the specifically earmarked Congressional funds for the CSRC program to establish and continue operation of an Air Force production activity to scan existing (legacy) weapon systems documents and convert them into electronic form. Because the Air Force managed program has never achieved the tri-service participation envisioned by Congress, the Committee recommends bill language directing that management of the program be carried out within the Office of the Secretary of Defense.

The Committee wishes to reaffirm its intent and the Department's commitment to establish a 5-year contract with Concurrent Technologies Corporation (CTC), the current not-for-profit institution, to operate the tri-service CSRC as the CALS standards and technologies development, deployment, training and education hub for the CSRC program. Accordingly, $52,000,000 is recommended to be made available only for the CSRC program in Research, Development, Test and Evaluation, Defense Agencies, and the Committee directs that of the total fiscal year 1994 CSRC program funds recommended, $30,000,000 is specifically earmarked only for the CSRC operated by CTC for the following tri-service initiatives:

1. $4,000,000 for the establishment of a FCIM Tested Facility initiative in collaboration with the Department's Joint Center for FCIM;
2. $2,000,000 for the establishment of a Collaborative Application Protocol Development initiative in collaboration with the IGES/PDES Organization (IPO);

3. $2,000,000 for the establishment of a Manufactured Product Data Standards initiative in collaboration with national industrial interest groups, such as, but not limited to, the Society of Manufacturing Engineers, American Foundrymen's Society, Society of Automotive Engineers, American National Standards Institute, National Machine Tool Builders Association and the National Computer Graphics Association;

4. $3,000,000 for the establishment of CALS standards and technologies development, deployment, training and education linkage between the CSRC Program and the National Institute of Standards and Technology (NIST) Manufacturing Extension Partnerships (MEPs) and the Centers of Excellence and the Army's Center for Optics and DoD's National Defense Center for Environmental Excellence (NDCEE) administered by the Army:

5. $1,000,000 for the establishment at the CRS located in Orange, Texas of an Instructional Technology Development initiative; and

6. $18,000,000 for the establishment and continued operation of additional CRSs to be operated by educational or other nonprofit institutions located in Oakland, California; St. Petersburg, Florida; Atlanta, Georgia; Honolulu, Hawaii; Portland, Maine and Fairmont, West Virginia.

The Committee further directs that of the total fiscal year 1994 CSRC program funds recommended, $20,000,000 is specifically earmarked only for the continued operation of the CRSs located in Palestine Texas; Orange, Texas; San Antonio, Texas; Dayton, Ohio; Cleveland, Ohio; and Fairfax, Virginia. In addition, the Committee directs that neither the 5-year contract for the continued establishment and operation of the CSRC and CRSs by CTC, nor the contracts for the continued establishment and operation of other CRSs shall prohibit the use of the CSRC by industry, associations, other DoD services and agencies, and other government agencies for efforts to be separately negotiated and funded. The 1994 level of efforts for the CSRC should be continued with the submission of the fiscal year 1995 and future budgets.

Strategic Programs

VERIFICATION TECHNOLOGY DEMONSTRATION (0603711H)

A total of $46,350,000 has been requested to support research and development associated with specific treaty requirements. Given the reduced requirement in the current geo-political environment, a reduction of $5,000,000 is recommended.

NATIONAL MILITARY COMMAND SYSTEM-WIDE SUPPORT (0302016K)

A total of $3,500,000 has been requested for National Military Command System-Wide Support. A reduction of $388,000 is recommended to reduce the amount available for studies.

WWMCCS SYSTEMS ENGINEERING (030219K)

A total of $9,253,000 has been requested for support for WWMCCS Systems Engineering. A reduction for $600,000 has

been included to reflect the decreased requirement for funds requested for now-defunct organizations such as Forces Command.

WWMCCS ADP MODERNIZATION (0303154J)

DOD has requested $7,000,000 for WWMCCS ADP Modernization. Deletion of the entire requested is recommended pending completion of system definition and better cost estimates.

TACTICAL PROGRAMS

PHYSICAL SECURITY EQUIPMENT (0603228D)

The Department requested $20,676,000 for Physical Security Equipment. The Committee recommends $30,676,000, an increase of $10,000,000, as follows: $5,000,000 only for the development of the Mobile Detection Assessment Response System—Exterior (MDARS-E) physical security vehicle; and $5,000,000 only for a joint Security/Scout vehicle program.

JOINT ROBOTICS PROGRAM (0603709D)

The Department requested $22,125,000 for Joint Robotics Program. The Committee recommends $32,125,000, an increase of $10,000,000 to the request. Several years ago, Congress because of its concern about the lack of defined requirements for unmanned ground vehicles and the lack of focus for the many diverse robotics projects consolidated the program under the Office of the Secretary of Defense (OSD) direction. The Committee is pleased with the progress in this area. The Army has recently developed an approved operational requirement document (ORD) for a Mobile Detection Assessment Response System—Exterior (MDARS-E) for development of a small robotic vehicle for physical security applications with excellent potential for other government uses and commercial spinoff. Therefore, the additional $10,000,000 is only for development of an unmanned scout vehicle and technology that supports its development.

ADVANCED SENSOR APPLICATIONS PROGRAM (0603714D)

The Department budgeted $25,920,000 for the advanced sensor applications program. The Committee recommends $39,919,000, an increase of $13,999,000 to consolidate non-acoustic anti-submarine warfare programs by transferring funds from the Navy.

AIM-9 CONSOLIDATED PROGRAMS (0603715D)

The Department budgeted $9,593,000 for the AIM-9 missile consolidated program. The Committee recommends $43,480,000, an increase of $33,887,000 to consolidate AIM-9 missile programs by transferring funds from the Air Force. The Committee directs that the AIM-9X acquisition strategy permit and encourage the use of subsystems, components, and technologies that are fully or substantially developed in the United States, NATO, or non-NATO major allied nations.

MOBILE OFF SHORE BASING (0604705D)

The Department did not request funds to continue the Congressional initiative begun last year to examine the feasibility of mobile off shore basing for military operations. The Committee recommends $24,000,000.

JOINT REMOTELY PILOTED VEHICLE PROGRAM (0305141D)

The Department requested $180,112,000 for the joint remotely piloted vehicle program. The Committee recommends $151,237,000, a reduction of $28,875,000 to the budget request. In accordance with the House Intelligence Committee, the Committee denies all funds for the close range unmanned air vehicle development effort and hereby terminates the program.

The Committee does not, however, agree with the proposal of the House Armed Services and Intelligence Committees to disband the congressionally mandated Joint Program Office (JPO) which currently manages all tactical UAV development and procurement programs. While acknowledging the schedule delays and cost growth that has characterized UAV development to date, the Committee believes that substantial progress has been made in the fielding of the Joint Short Range UAV system. Disbanding the JPO at this point would only serve to further delay the fielding of the next operational UAV system and deny the services a much needed capability. The Committee also believes that retention of the JPO is imperative to ensure that the commonality and interoperability of all UAV systems is maintained in the future. The Committee therefore directs that no appropriated funds may be obligated for tactical UAV programs which would be or are managed by Defense Department organizations other than the joint program office.

INTELLIGENCE AND COMMUNICATIONS

LONG-HAUL COMMUNICATIONS (0303126K)

The Defense Information Systems Agency has requested $20,720,000 for support to long-haul communications systems. The bulk of the growth of $7,252,000 over the fiscal year 1993 appropriation is for the Defense Information Systems Network. A reduction of $4,000,000 is recommended to reduce the rate of growth.

DEFENSE MAPPING AGENCY MC&G PRODUCTION (0305139B)

The Defense Mapping Agency has requested $66,334,000 for mapping, charting, and geodesy production for FY 1994. The Committee recommends $56,334,000, a reduction of $10,000,000. This maintains the fiscal year 1993 spending level.

AIRBORNE RECONNAISSANCE SUPPORT PROGRAM (0305154I)

The Defense Support Projects Office has requested a total of $356,303,000 for various airborne reconnaissance programs. While no change has been recommended to the funding level, specific program direction is included in the classified report.

AIR RECONNAISSANCE INITIATIVE

The Office of the Secretary of Defense did not request funds for an Airborne Reconnaissance Initiative. The Committee recommends $75,906,000. Details are provided in the C^{3}I section of this report.

DEFENSE RECONNAISSANCE SUPPORT ACTIVITIES (0305159I)

The Defense Support Projects Office has requested a total of $81,872,000 for reconnaissance support activities. A reduction of $30,840,000 is recommended, the details of which are included in the classified report.

DEFENSE-WIDE MISSION SUPPORT

NATO R&D (0603790D)

The Department requested $57,641,000 for NATO research and development. The Committee recommends that no funds be provided due to fiscal constraints, and the need to apply this funds to higher priorities such as defense conversion of American companies.

TECHNICAL STUDIES, SUPPORT AND ANALYSIS (0605104D)

The Department budgeted $37,434,000 for technical support to the Office of the Secretary of Defense. The Committee recommends $31,000,000, a reduction of $6,434,000 due to fiscal constraints.

FOREIGN MATERIEL ACQUISITION AND EXPLOITATION (0605117D)

The Office of the Secretary of Defense has requested $336,176,000 for Foreign Materiel Acquisition and Exploitation, an increase of $324,163,000 over the fiscal year 1993 spending level. The Committee recommends $12,000,000, a reduction of $324,176,000. Details are addressed in the classified report.

DEFENSE SUPPORT ACTIVITIES (0605798S)

The Department requested $12,561,000 for Defense Support Activities. The Committee recommends $45,561,000, an increase of $33,000,000. Within this amount, $3,000,000 is only for shipbreaking technology as recommended by the House Armed Services Committee in its 1994 bill. The Committee believes there may be a potential savings in utilizing new technology for the breaking of decommissioned ships and the management of hazardous materials taken from those ships. The Committee recommends a single site demonstration project to investigate the effectiveness and benefits of new procedures and processes for ship breaking by domestic companies or a consortia of domestic companies.

An additional $30,000,000 is only for the following CALS activities of the Defense Logistics Agency: developing software cost estimation models for object-oriented development environments, establishing proactive quality engineering, providing support of concurrent engineering-based business practices, developing a personal computer based logistics data server, providing benefits analysis planning tools, developing the CALS expert or rule-based system for management of consumable items, developing a CALS-compli-

ant digital manifest record applicable to container shipments, developing a CALS-compliant automated office, developing a CALS-compliant ICP aviation component rework parts usage information system, researching and analyzing the use of CALS-compliant emerging controls and technologies to enhance procurement leadtimes and efficiencies, developing a system for utilizing mass storage in optical discs, and converting to a digital production imaging control system versus a manual work distribution and control system. Funds are also provided for the Defense Commissary Agency to develop an optical scanning and archiving capability.

MANAGEMENT HEADQUARTERS (RESEARCH AND DEVELOPMENT) (0605898E)

ARPA requested $24,005,000 which covers its infrastructure costs. Due to increasing workload, especially due to the President's defense conversion initiative, the Committee recommends $25,505,000, an increase of $1,500,000 for additional personnel costs.

MANUFACTURING TECHNOLOGY DEVELOPMENT

The Committee recommends $45,300,000 for manufacturing technology. Within this amount, $2,800,000 is only for the combat rations manufacturing technology demonstration (CRAMTD); $7,500,000 is only for generalized emulation of microcircuits; $10,000,000 is only for military sewn products; $15,000,000 is only for metalcasting as recommended by the House Armed Services Committee in its 1994 bill; and $10,000,000 is only for machine tools also as recommended by the House Armed Services Committee.

ELECTRIC VEHICLE TECHNOLOGY

ARPA requested no funds for electric vehicle technology. The Committee recommends $50,000,000 to continue the Congressional initiative begun last year. Within this amount, $5,000,000 is only for the electric vehicle program at McClellan AFB; $5,000,000 is only for an agile manufacturing project in advanced transportation systems (including electric vehicles) in Los Angeles, California; $5,000,000 is only for the non-profit California Hybrid Electric Vehicle Consortium for development of hybrid electric vehicles; and $10,000,000 is only for the non profit organization Concurrent Technologies Corporation to establish and operate the Mid Atlantic Regional Consortium for Advanced Vehicles. Concerning the latter, the consortium should be funded to conduct applied research and development activities to include, but not be limited to, the following Congressionally mandated initiatives in support of the ARPA Electric and Electric hybrid vehicle technology and infrastructure program: a national hybrid and electric vehicle information network; hybrid electric vehicle mobile testbed; high energy magnets (for motors, alternators, bearings, and levitation); modular, scalable low and moderate temperature fuel cells; composites and other advanced materials science; hydride fuel storage and heat pump systems; advanced DC motors and generators; multi-fuel internal combustion engines; sensor and connection technologies; battery array

charging and management systems; battery manufacturing and distribution; electric and hybrid bus manufacturing; vehicular HVAC systems; and vehicle system control technologies.

NATURAL GAS VEHICLES

ARPA requested no funds for natural gas vehicle technology. The Committee recommends $25,000,000 to continue the Congressional initiative begun last year. Within this amount, $10,000,000 is only for R&D on vehicles, and $15,000,000 is only for conversion and infrastructure demonstration.

In order to prevent inefficient duplication of government effort in research, development, and demonstration pertaining to electric motor vehicles, the Committee directs the Advanced Research Projects Agency (ARPA) to seek technical guidance from and coordinate the program with the Department of Energy. The Department of Energy has an ongoing research, development, and demonstration program for electric vehicles established by the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, title VI of the Energy Policy Act of 1992, and other statutes, and therefore has a great deal of technological expertise to contribute. An agreement should be executed between the Secretary of Defense and the Secretary of Energy describing the respective responsibilities of the two agencies in this program. Similar agreements should be completed for research pertaining to fuel cells, natural gas, and coal.

COMMERCIAL COMMUNICATIONS

As discussed elsewhere in this report, an increase of $20,000,000 has been included for the Commercial Satellite Communications Initiative of the Defense Information Systems Agency.

SPACE SURVEILLANCE

As discussed elsewhere in this report, a reduction of $200,000,000 is recommended for early warning space surveillance satellite systems.

EARTH CONSERVANCY

The Committee recommends $40,000,000 to continue the Earth Conservancy initiative begun by Congress last year.

SYNTHETIC ENVIRONMENTS

The Committee believes that DOD should afford a higher priority to Naval applications when allocating modelling and simulation funds for development of synthetic environments.

SPACE LAUNCH VEHICLES

As discussed elsewhere in this report under Space and Related Programs, the Committee has provided $50,000,000 to the Advanced Research Projects Agency for development of new space launch technologies.

Of the total amount provided, at least $40,000,000 must be allocated for a long-term effort to produce an unmanned single-stage-to-orbit prototype launch vehicle. These funds may only be used for

a competitive effort. Moreover, since ARPA has repeatedly demonstrated its ability to manage innovative technology programs, the Committee, therefore, also directs that any contracts awarded with these funds must be managed by ARPA itself and not by another federal organization on a reimbursable basis.

The remaining $10,000,000 shall be used for additional research on such launch technologies as hybrid rocket motors and parafoils.

TACTICAL SIGNALS INTELLIGENCE

As discussed under Space and Related Activities, $80,000,000 has been added to the Advanced Research Projects Agency for a tactical signals intelligence project. Additional details are provided in the classified report.

SPECIAL OPERATIONS FORCES

SPECIAL OPERATIONS ADVANCED TECHNOLOGY DEVELOPMENT

Special Operations Special Technology: The Committee recommends an additional $4 million for designing and developing prototype systems to enhance Civil Affairs and Psychological Operations (Psyops) activities associated with Special Operations Forces humanitarian, civil assistance, and combat mission. The funds will be employed to improve mission planning capabilities and to develop and integrate advanced data acquisition equipment and software programs to assist medical, engineer, public administration, and PSYOPS personnel to perform their missions.

Explosive Ordnance Disposal for Low Intensity Conflict: An additional $2 million has been provided to ensure that prototypes that address mine and unexploded ordnance requirements continue to be developed at an acceptable rate.

IntraFormation Positioning System (IFPS): Air Force Special Operations Command formation flight accidents in October 1984 and May 1986, which resulted from a lack of situational awareness under reduced visibility conditions, were the catalyst for the IFPS requirements. A formation flight accident in October 1992 caused by a loss of situational awareness in a reduced visibility condition has placed a renewed emphasis on the criticality of getting the IFPS program into production and operationally deployed. The Committee recommends $15.5 million to continue the development of the IFPS.

SPECIAL OPERATIONS TACTICAL SYSTEMS DEVELOPMENT

"Quiet Knight". The Committee recommends $6 million to continue with Phase III of the Quiet Knight Technical Demonstration program and to initiate transition of successfully demonstrated subsystems into Engineering & Manufacturing Development of the Special Operations aircraft fleet.

CV–22. The Committee has added an additional $20 million for the CV–22 program.

Stabilized Weapons Platform System. The Committee supports the successful conclusion of the Patrol Boat, Coastal program and its main armament, the Stabilized Weapons Platform System (SWPS). Because of delays in the SWPS program, the coastal patrol boats are being delivered without SWPS armament. The Commit-

tee believes it is essential that the SWPS program be initiated immediately so that the coastal patrol boats can be missionized and crews trained as quickly as possible. The Committee approves the budget request for the SWPS program and directs the Department to proceed immediately with the prototype program and to fully fund the entire SWPS program and to include the necessary non-recurring funds needed. The Committee also directs the Department to consider potential schedule and funding alternatives for quicker development and integration of the SWPS armament on some coastal patrol boats prior to their production completion. The Committee is aware of the Navy's cost operational effectiveness analysis regarding the advanced minor caliber gun system (AMCGS) and believes that a proper design of SWPS can fulfill the missions to have been performed by AMCGS, including the Coast Guard requirement.

PROGRAM SUMMARY

The following schedule shows the budget estimate, the recommended appropriation, and the change from the budget estimate for fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
RESEARCH DEVEOPMENT TEST & EVAL DEFWIDE			
TECHNOLOGY BASE			
IN-HOUSE LABORATORY INDEPENDENT RESEARCH	3,368	3,368	---
DEFENSE RESEARCH SCIENCES	79,657	79,657	---
DEFENSE RESEARCH SCIENCES	2,021	2,021	---
UNIVERSITY RESEARCH INITIATIVES	242,611	274,611	+32,000
FOCUSED RESEARCH INITIATIVES	29,472	20,000	-9,472
COUNTERTERROR TECHNICAL SUPPORT	6,165	6,169	---
MEDICAL FREE ELECTRON LASER	19,248	19,248	---
HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) SC	---	15,000	+15,000
COMPUTING SYSTEMS AND COMMUNICATIONS TECHNOLOGY	368,589	272,789	-96,000
TACTICAL TECHNOLOGY	143,891	156,541	+12,650
INTEGRATED COMMAND AND CONTROL TECHNOLOGY	57,214	125,014	+67,000
MATERIALS AND ELECTRONICS TECHNOLOGY	156,502	303,202	+104,700
DEFENSE NUCLEAR AGENCY	269,368	238,388	-80,000
DOD SOFTWARE TECHNOLOGY INITIATIVE	43,304	---	-43,304
MEDICAL TECHNOLOGY	6,737	6,737	---
SMALL BUSINESS INNOVATIVE RESEARCH/SMALL BUS TECH TRAN	24,703	22,000	-2,643
SMALL BUSINESS INNOVATIVE RESEARCH/SMALL BUS TECH TRAN	3,951	3,439	-412
COMMAND AND CONTROL RESEARCH	1,847	1,847	---
CONTRACT ADMINISTRATION/AUDIT	6,834	---	-6,834
SMALL BUSINESS INNOVATIVE RESEARCH/SMALL BUS TECH TRAN	2,281	2,037	-244
GENERAL REDUCTION, 92 LEVEL	---	-35,000	-36,000
TOTAL, TECHNOLOGY BASE	1,528,697	1,517,128	-11,569
BMD ORGANIZATION'S FUNDS			
BALLISTIC MISSILE DEFENSE (BMD)	---	2,870,040	+2,870,040
OTHER FOLLOW-ON SYSTEMS	354,187	---	-354,167
THEATER MISSILE DEFENSES	1,636,304	---	-1,636,304
THEATER MISSILE DEFENSES	80,410	---	-80,410
LIMITED DEFENSE SYSTEM	1,196,458	---	-1,196,458
RESEARCH AND SUPPORT ACTIVITIES	368,223	---	-858,223
SMALL BUSINESS INNOVATIVE RESEARCH/SMALL BUS TECH TRAN	42,552	---	-42,552
TOTAL, BMD ORGANIZATION'S FUNDS	3,657,135	2,670,040	-767,095
ADVANCE TECHNOLOGY DEVELOPMENT			
MEDICAL ADVANCED TECHNOLOGY	4,701	11,001	+6,300
JOINT DOD-DOE MUNITIONS TECHNOLOGY DEVELOPMENT	16,446	16,446	---
EXPERIMENTAL EVALUATION OF MAJOR INNOVATIVE TECHNOLOGI	512,156	817,086	+104,000
ADVANCED SUBMARINE TECHNOLOGY	32,556	---	-32,556
MARITIME TECHNOLOGY OFFICE	---	100,589	+180,556
DUAL-USE PARTNERSHIPS	324,000	624,000	+300,000
SPECIAL TECHNICAL SUPPORT	6,841	8,841	---
MANUFACTURING TECHNOLOGY	147,733	---	-147,733
STRATEGIC ENVIRONMENTAL RESEARCH PROGRAM	97,968	67,968	-30,000
FOCUS HOPE	---	20,000	+20,000
COMPUTER AIDED LOGISTICS SUPPORT	10,424	23,224	+12,800
COOPERATIVE DOD/VA MEDICAL RESEARCH	---	30,000	+30,000
MANUFACTURING TECHNOLOGY	299,597	342,340	+42,743
SEMATECH	---	90,000	+90,000
ADVANCED SIMULATION	9,207	9,207	---
SEMICONDUCTOR MANUFACTURING TECHNOLOGY	100,000	10,000	-90,000
HIGH PERFORMANCE COMPUTING MODERNIZATION PROGRAM	122,819	---	-122,819
CONSOLIDATED DOD SOFTWARE INITIATIVE	9,151	31,651	+22,800
JOINT WARGAMING SIMULATION MANAGEMENT OFFICE	87,152	67,152	---
ROCKET MOTOR DEMILITARIZATION PROGRAM	12,267	27,267	+15,000
SPECIAL OPERATIONS TECHNOLOGY DEVELOPMENT	17,794	17,794	---
SPECIAL OPERATIONS ADVANCED TECHNOLOGY DEVELOPMENT	9,655	31,165	+21,510
SOF MEDICAL TECHNOLOGY DEVELOPMENT	1,310	1,310	---
DOD/CTC JOINT CALS INITIATIVE	---	52,000	+52,000
TOTAL, ADVANCE TECHNOLOGY DEVELOPMENT	1,803,800	2,269,010	+485,201
STRATEGIC PROGRAMS			
VERIFICATION TECHNOLOGY DEMONSTRATION	48,350	41,380	-5,000
ISLAND SUN SUPPORT	15,822	15,822	---
NATIONAL MILITARY COMMAND SYSTEM-WIDE SUPPORT	3,500	3,112	-388
WWMCCS SYSTEMS ENGINEER	9,253	8,653	-800
MINIMUM ESSENTIAL EMERGENCY COMMUNICATIONS NETWORK (ME	3,285	3,285	---
WWMCCS ADP MODERNIZATION	7,000	---	-7,000
CONTRACT ADMINISTRATION/AUDIT	436	---	-436
TOTAL, STRATEGIC PROGRAMS	85,646	72,222	-13,424

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
TACTICAL PROGRAMS			
PHYSICAL SECURITY EQUIPMENT	20,676	30,676	+10,000
JOINT ROBOTICS PROGRAM	22,125	32,125	+10,000
CLASSIFIED PROGRAM - C3I	9,912	9,912	---
ADVANCED SENSOR APPLICATIONS PROGRAM	25,920	39,919	+13,999
AIM-9 CONSOLIDATED PROGRAM	9,583	43,480	+33,897
BIOLOGICAL DEFENSE - ADVANCED DEVELOPMENT	26,355	26,355	---
MOBILE OFFSHORE BASING	---	24,000	+24,000
JOINT TACTICAL INFORMATION DISTRIBUTION SYSTEM (JTIDS)	67,053	67,053	---
CINC C2 INITIATIVES	1,193	1,193	---
C3 INTEROPERABILITY (JOINT TACTICAL C3 AGENCY)	26,088	26,088	---
JOINT REMOTELY PILOTED VEHICLES PROGRAM	180,112	151,237	-28,875
CONTRACT ADMINISTRATION/AUDIT	4,656	---	-4,656
CONTRACT ADMINISTRATION/AUDIT	1,283	---	-1,283
SPECIAL OPERATIONS TACTICAL SYSTEMS DEVELOPMENT	221,305	247,305	+26,000
SPECIAL OPERATIONS INTELLIGENCE SYSTEMS DEVELOPMENT	6,686	6,686	---
SOF OPERATIONAL ENHANCEMENTS	72,157	72,157	---
TOTAL, TACTICAL PROGRAMS	697,124	780,156	+83,072
INTELLIGENCE & COMMUNICATIONS			
LONG-HAUL COMMUNICATIONS (DCS)	20,720	16,720	-4,000
SUPPORT OF THE NATIONAL COMMUNICATIONS SYSTEM	3,639	3,639	---
DMA MAPPING, CHARTING, AND GEODESY (MC&G) PRODUCTION S	66,334	56,334	-10,000
AIRBORNE RECONNAISSANCE SUPPORT PROGRAM	356,303	356,303	---
AIRBORNE RECONN. INITIATIVE	---	75,906	+75,906
LAND REMOTE SENSING SATELLITE SYSTEM	34,506	34,506	---
DEFENSE RECONNAISSANCE SUPPORT ACTIVITIES	11,320	11,320	---
DEFENSE RECONNAISSANCE SUPPORT ACTIVITIES	81,872	51,032	-30,840
C3I INTELLIGENCE PROGRAMS	6,754	16,754	+10,000
CONTRACT ADMINISTRATION/AUDIT	1,357	---	-1,357
CONTRACT ADMINISTRATION/AUDIT	23,451	---	-23,451
CONTRACT ADMINISTRATION/AUDIT	4,625	---	-4,625
CONTRACT ADMINISTRATION/AUDIT	269	---	-269
CLASSIFIED PROGRAMS	1,280,732	1,265,926	-14,806
TOTAL, INTELLIGENCE & COMMUNICATIONS	1,892,282	1,888,640	-3,642
DEFENSEWIDE MISSION SUPPORT			
INTEGRATED DIAGNOSTICS	10,441	10,441	---
NATO RESEARCH AND DEVELOPMENT	57,641	---	-57,641
TECHNICAL STUDIES, SUPPORT AND ANALYSIS	37,434	31,000	-6,434
BLACK LIGHT	4,675	4,675	---
FOREIGN MATERIAL ACQUISITION AND EXPLOITATION	336,176	12,000	-324,176
DEFENSE SUPPORT ACTIVITIES	12,561	45,561	+33,000
MANAGEMENT HEADQUARTERS (RESEARCH AND DEVELOPMENT)	24,006	25,506	+1,500
MANUFACTURING TECHNOLOGY DEVELOPMENT	---	45,300	+45,300
ELECTRIC VEHICLE TECHNOLOGY	---	50,000	+50,000
CONTRACT ADMINISTRATION/AUDIT	18,625	---	-18,625
CONTRACT ADMINISTRATION/AUDIT	27,873	---	-27,873
CONTRACT ADMINISTRATION/AUDIT	235	---	-235
TOTAL, DEFENSEWIDE MISSION SUPPORT	528,866	224,882	-306,184
NATURAL GAS VEHICLES	---	25,000	+25,000
GENERAL REDUCTION, OVERHEAD	---	-130,000	-130,000
COMMERCIAL COMMUNICATIONS	---	20,000	+20,000
ARPA SPACE PROGRAMS	---	130,000	+130,000
SPACE SURVEILLANCE	---	-200,000	-200,000
EARTH CONSERVANCY	---	40,000	+40,000
TOTAL, RESEARCH DEVEOPMENT TEST & EVAL DEFWIDE	10,174,549	9,526,918	-647,631

DEVELOPMENTAL TEST AND EVALUATION, DEFENSE

Appropriations, 1993	$259,707,000
New obligational authority, 1994:	
Estimate	272,592,000
Recommended	232,592,000
Decrease	40,000,000

This appropriation funds Developmental Test and Evaluation, Defense activities, for direction and supervision of test and evaluation, joint testing, improvement of the effectiveness and efficiency of the DOD major ranges and test facilities, and technical and/or operational evaluation of foreign nations' weapon systems, equipment, and technologies.

COMMITTEE RECOMMENDATIONS

DEVELOPMENT TEST AND EVALUATION (0604940D)

The Department requested $115,819,000 for development test and evaluation. The Committee recommends $100,819,000, a reduction of $15,000,000 as recommended by both Armed Services Committees in their 1994 bills.

FOREIGN COMPARATIVE TESTING (0605130D)

The Department requested $34,913,000 for foreign comparative testing. The Committee recommends $24,913,000, a reduction of $10,000,000 as recommended by the House Armed Services Committee in its 1994 bill. The Committee directs that none of the reduction be applied to the F–14 Digital Flight Control system project.

DEVELOPMENTAL TEST AND EVALUATION (0605804D)

The Department requested $114,135,000 for developmental test and evaluation. The Committee recommends $99,135,000, a reduction of $15,000,000 as recommended by the House Armed Services committee in its 1994 bill.

PROGRAM SUMMARY

The following schedule shows the budget estimate, the recommended appropriation, and the change from the budget estimate for fiscal year 1994:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST	COMMITTEE RECOMMENDED	CHANGE FROM REQUEST
DIRECTOR OF TEST & EVAL DEFENSE			
CENTRAL TEST AND EVALUATION INVESTMENT DEVELOPMENT (CT	115,819	100,819	-15,000
FOREIGN COMPARATIVE TESTING	34,913	24,913	-10,000
LIVE FIRE TESTING	7,725	7,725	---
DEVELOPMENT TEST AND EVALUATION	114,135	99,135	-15,000
TOTAL, DIRECTOR OF TEST & EVAL DEFENSE	272,592	232,992	-40,000

OPERATIONAL TEST AND EVALUATION, DEFENSE

Appropriations, 1993	$12,983,000
New obligational authority, 1994:	
Estimate	12,650,000
Recommended	12,650,000
Decrease	0

This appropriation funds activities of the Office of the Director, Operational Test and Evaluation.

TITLE V

REVOLVING AND MANAGEMENT FUNDS

DEFENSE BUSINESS OPERATIONS FUND

Fiscal year 1993 appropriations	$1,123,800,000
Fiscal year 1994 budget request	1,161,095,000
Committee recommendation	1,091,100,000
Change	69,995,000

DBOF Cash Transfer. The fiscal year 1994 budget request includes approximately $3 billion of cash transfer from the Defense Business Operations Fund (DBOF) to fully fund the Services' O&M accounts. Discussions with representatives from the Office of the Secretary of Defense indicate that the DBOF may be unable to generate this large amount of cash. This means that the O&M budget request may be short by as much as $3 billion.

The Committee considers the operation and maintenance appropriation as the source to maintain the readiness of our armed forces. Accordingly, shortfalls in O&M funding caused by the inability for DBOF to generate excess cash adversely impact the readiness of the force. The Committee adamantly opposes this practice.

If the Department plans to propose DBOF cash transfer in future budget requests, the Committee strongly recommends that the Department use more precise and accurate calculations in determining the amount to be transferred.

DBOF Expansion. The Committee denies the Department's request to transition the Defense Contract Audit Agency (DCAA) and Defense Contract Management Command (DCMC) into the DBOF. All DOD accounts have been adjusted to reflect Committee action.

Defense Commissary Agency. The Committee recommends a reduction of $70 million. The Committee denies the request to use $58.8 to pay for DBOF's prior year losses. Additionally, the request is further reduced by $11.1 million because the Department plans to close 10 commissaries during fiscal year 1994.

Defense Business Management System. On January 28, 1993, the Committee requested that no further resources be spent on the Defense Business Management System (DBMS) until a review was conducted on the selection of this standard finance and accounting system for the Department. Despite this request, the Department has not stopped or even slowed expenditures on DBMS. During fiscal year 1993, the Department will spend an estimated $56.6 million on DBMS development and equipment, an increase of 280 percent over fiscal year 1992. The Department request for fiscal year 1994 includes at least $53.3 million for software development alone. From fiscal year 1985 through fiscal year 1992, an annual average of $6.1 million was spent to support DBMS.

Accordingly, the Committee has recommended bill language directing that no funds be spent from the Defense Business Operations Fund (DBOF) on the DBMS until a thorough review has been performed on this system.

The Committee is also concerned over the individuals selected by the Department to review the DBOF and DBMS, since many of the officials involved in the creation of DBOF and the selection of DBMS are now taking part as review group members and/or advisors. Therefore, the Committee directs that the Secretary ensure that an impartial review is accomplished on DBOF by ensuring that no individuals involved in the current DBOF review process may have had previous personal involvement in the DBOF/DBMS effort.

NATIONAL DEFENSE SEALIFT FUND

Appropriations, 1993	$613,400,000
New obligational authority:	
Estimate	290,800,000
Recommended	490,800,000
Increase	200,000,000

The Committee recommends $490,800,000 for the National Defense Sealift Fund in fiscal year 1994.

The Committee is generally pleased that the Navy has finally been able to award contracts for conversion of five ships and construction of one ship with options for five more ships. These very recent contract awards have demonstrated to the Committee that the Navy is finally committed to resolving the shortfall in sealift assets as well as provide necessary work for the nation's shipbuilding industrial base.

To further encourage the economic recovery of the shipbuilding industry, the Committee recommends an increase of $200,000,000 to the budget request. The increased funding may be used to provide loan guarantees for ship construction and shipyard facility improvements which make use of new technologies and processes which have been demonstrated by Department of Defense organizations.

TITLE VI

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

Appropriations, 1993	$9,242,572,000
New Obligational Authority, 1994:	
Estimate	9,353,300,000
Recommended	9,644,447,000
Increase	291,147,000

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program for fiscal year 1994:

[In thousands of dollars]

	Budget request	Committee recommended	Change from request
DEFENSE HEALTH PROGRAM			
Operation and Maintenance	$9,080,538	$9,368,185	+$287,647
All Other Programs	9,024,685	9,024,685	0
Identified Shortfall	0	300,000	+300,000
Lab Tech Demonstration	0	1,000	+1,000
Cancel DBOF Base Support Test	49,853	0	−49,853
William Beaumont ADP/Indigents	0	2,500	+2,500
Medical Imaging Network—Washington	0	3,000	+3,000
Head and Neck Injury Initiative	6,000	7,000	+1,000
CHCS/Blood/Anatomy	0	30,000	+30,000
Procurement	272,762	276,262	+3,500
All Other Programs	272,762	272,762	0
Digital Mammography System	0	3,500	+3,500
Total, Defense Health Program	9,353,300	9,644,447	+291,147

COMMITTEE RECOMMENDATIONS

MANAGED CARE—OVERVIEW

The Committee supports the Department's development of a managed health care delivery system with its Lead Agent Health Care Delivery Program. The Committee is pleased that the Department is preserving the regional, at-risk, fixed price contract for all CHAMPUS beneficiaries with a triple option benefit within each Health Service Region and, therefore, includes a general provision directing such a contract award for a Lead Agent Health Service Region.

The Committee believes the Department has all the authority it needs to proceed immediately with the Department's new health care proposals and is concerned that the Department feels addi-

tional authorization is needed to expand its cost-effective efforts. Currently, the Department is authorized to contract directly with Health Maintenance Organizations (HMOs). Section 1097 of Title 10, Chapter 55, provides for the Secretary to "enter into a contract with . . . Health maintenance organization." The scope of the services may include "selected health care services" or "total health care services" as designated by the Secretary. Section 1099 also authorizes a health care enrollment system.

In keeping with direction provided in the fiscal year 1993 Defense Appropriations Bill, the Committee also includes a general provision directing the fiscal year 1994 contract awards for Florida, Washington and Oregon as an expansion of the CHAMPUS Reform Initiative, a design similar to the Lead Agent Program.

The Committee believes that adjustments necessary as a result of national health care reform are likely to be minimal on the Department, and therefore the Department's successes achieved thus far should be implemented immediately.

In the fiscal year 1994 budget hearing process, the Committee was informed of a $531,000,000 shortfall in the Defense Health Program. The Committee has recommended an increase of $300,000,000 to the Defense Health Program to partially cover this shortfall. The Committee is concerned that the Department should not wait or reduce health care benefits, but should immediately take any such actions necessary to reallocate resources in fiscal year 1994 to cover the remainder of this identified shortfall. One area of the country that the Committee would particularly like the Department to focus on is Holloman Air Force Base, in Alamogordo, New Mexico, to ensure that adequate services are provided to all eligible beneficiaries.

In addition, from these funds the Army is directed to utilize the amounts required to maintain the existing level of health care services at the Tobyhanna Army Depot. The Army is specifically directed not to reduce the personnel staffing levels, pharmacy and laboratory services conducted at that facility's Army Health Clinic.

MEDICAL PERSONNEL END STRENGTH

The Committee shares the concern expressed by the House Armed Services Committee over the Department's fiscal year 1993 certification that a reduction in medical personnel was cost effective and would not lead to an increase in CHAMPUS costs. The Committee believes the Department is wrong in this matter and agrees that the General Accounting Office needs to investigate this certification process. Therefore, the Committee has amended a general provision to ensure that no medical end strength are reduced in fiscal year 1994 while this issue is addressed between the Department, the Congress, and the General Accounting Office.

The Committee is also concerned that the Army has chosen to draw down its graduate medical education (GME) end strength in order to partially meet the Army's end strength goals. This choice is contrary to every fiscally prudent financial practice since it will lead to a dramatic increase in the CHAMPUS budget. Accordingly, the Committee directs the Army, based on this general provision, not to reduce any GME end strength and to insure that all GME billets are filled in fiscal year 1994.

In addition, while the Department of Defense grapples with the issues associated with the drawdown of forces, there continues to be a pressing need to provide health care to our active duty forces, their depondents, retirees and their dependents, and other eligible DoD beneficiaries. The drawdown does not produce a commensurate decrease in the requirements for health care services for the DoD beneficiary population. In light of this, the Committee directs that DeD exempt the military medical departments from any hiring freezes for civilian personnel, or other policy restrictions on civilian hiring allocations, and continue to maintain the level of active duty medical forces that is necessary to protect continued access to health care and that will ensure a ready force and meet the health care needs of all eligible DoD beneficiaries.

MAIL SERVICE PHARMACY

The Committee is pleased that the Department has proceeded ahead with a directed mail service pharmacy program in two multi-state regions plus Hawaii. The Department's commitment to using government-procured pharmaceuticals for this purpose demonstrates a refreshing attention to good government, good business practices, and cost-containment. In light of the projected efficiencies of this new program, the Committee directs the Department to expand mail service coverage by competitively awarding mail service pharmacy contracts for support to base closure sites and at least two additional multi-state regions, which includes the State of Kentucky, during fiscal year 1994.

To better understand the efficiencies that may be obtained by reducing beneficiary refill traffic through military hospitals and by improved drug utilization review, the Committee has included bill language directing the Department to implement a one-year test during fiscal year 1994 of a direct linkage for refill prescriptions between the mail service contractor and a military hospital. The Department is to report to Congress on the progress of this linkage test by June 1, 1994.

Finally, the Committee directs that the Army maintain a pharmacy operation at the Richmond Blue Grass Army Depot, Richmond, Kentucky, until a mail service pharmacy program has been implemented in the State of Kentucky.

BASE OPERATIONS/DBOF TEST

The Committee disagrees with the request to include base operations support for several Army installations in the Defense Business Operations Fund. All DoD accounts have been adjusted to return the funding of base operations support to host units.

HOME HEALTH CARE

The Committee has long supported the evolution of managed care within the Department of Defense to improve access to quality care with cost containment efforts. Efficient alternatives to hospitalization have been adopted in the civilian sector to achieve cost containment such as home health care. The Committee encourages the Department to aggressively pursue the implementation of home health care services within the direct care system and directs the

Department to submit a report on its implementation plan not later than June 30, 1994. Additionally, the Department should utilize the case management services available under the CHAMPUS Reform Initiative and other CHAMPUS managed care programs to assist local hospital commanders with early identification of patients for whom home services afford an alternative to hospitalization. Such affiliation would assist with the timely, cost-effective integration of home health services within the direct care system.

DOCTORS OF CHIROPRACTIC DEMONSTRATION PROJECTS

The fiscal year 1993 Defense Authorization Bill provided authority for the Department to appoint Doctors of Chiropractic as commissioned officers of the Armed Forces. To date, the Department has chosen not to use this permissive authority. The Committee recommends that the Department consider establishing a chiropractic services demonstration project at four military medical centers to test efficacy, efficiency, and cost savings attributed to chiropractic health care services. The Department should provide a progress report to the Committee not later than March 31, 1994, on this project.

NON-COMPENSATED CIVILIAN HEALTH CARE

A problem was identified to the Committee regarding military hospitals providing non-compensated emergency care to local civilians. For example, William Beaumont Army Medical Center, a leader in indigent trauma care, reported that in 1992 it provided $1,500,000 in non-compensated care for indigent civilians.

Therefore, the Committee has increased the Defense Health Program by $1,500,000 to be used to compensate William Beaumont for this care. The Department is directed to perform a study on the magnitude of this problem and why funds owed to the Department are not being collected. This study should be provided to the Committee by May 15, 1994.

As part of the study, the Department should investigate whether a new appropriations account needs to be established to which hospitals would report its non-compensated care over the past twelve months. Each hospital would then receive a pro rata share of this new fund based on the losses reported. This study should have no impact on the Department's vigorous efforts to collect all monies due by outside organizations. In addition, William Beaumont should develop a plan for regional trauma needs involving the indigent patient which would serve as a model for other communities similarly impacted.

WILLIAM BEAUMONT ARMY MEDICAL CENTER (WBAMC)

The Committee recommends an additional $1,000,000 for WBAMC for upgrades of its existing automated information system.

PRIMUS/NAVCARE CLINICS

PRIMUS/NAVCARE clinics serve a vital role in reducing backlogs in military facilities by improving access to primary care. In its Report to Congress on the PRIMUS/NAVCARE Evaluation, the

Department described a changing role for these clinics, a role as primary care manager (PCM) in the Department's managed care program. The Report outlined a number of PRIMUS/NAVCARE features which would have to change for these clinics to become PCMs.

The Committee would like to see this important primary care program incorporated into the Department's managed care program and is not aware that DOD has since addressed the future role of these clinics. Therefore, the Committee directs that the Department report by April 1, 1994, on its plans for the future of these clinics.

HEAD AND NECK INJURY INITIATIVE

The Committee commends the Department for continuing the Head and Neck Injury Initiative begun in fiscal year 1992 for Defense victims of head and neck injuries. By including $6,000,000 in the President's budget request, the Department will be able to continue tracking head injury victims, ensuring that the victim is getting appropriate treatment, studying the outcome of the treatment, and provide counseling for family members of the victim. The Committee is pleased that the Department has continued to work in cooperation with such organizations as the National Head Injury Foundation, Inc., to establish regional training centers to demonstrate to individuals what treatment is available. The Committee encourages the Department to consider establishing a residential treatment program for military personnel and beneficiaries with traumatic brain injuries.

The Committee has added $1,000,000 to establish a collaborative program—the "Violence and Brain Project". This program is designed to do more than study the problem of violence, it will offer model treatment programs, as well as prevention programs.

PHYSICIAN ASSISTANT DEMONSTRATION

The Committee is pleased that the Department has included $1,000,000 in the President's budget request to continue the ongoing physician assistant demonstration project begun in fiscal year 1992. The Committee recommends that the Department consider using students on a voluntary basis at local prisons to meet both mandatory program training requirements and relieve prison health care personnel shortfalls.

FORT BRAGG MENTAL HEALTH DEMONSTRATION

The Committee continues to recognize the value of the Child/Adolescent Mental Health Demonstration Project at Fort Bragg, North Carolina and is encouraged by the recent decision to continue to collect the data necessary to allow a meaningful evaluation of this project.

As the project comes to a conclusion several items still concern the Committee:

1. There appears to be an unnecessary amount of friction between Health Services Command (HSC) and the State of North Carolina. This problem has resulted in excessive lost time by all concerned. The Department is directed to ensure that the agree-

ments reached at the Headquarters level are implemented in the same spirit at HSC.

2. All efforts must be made to develop a satisfactory transition plan which will ensure that children currently enrolled in the project will continue to receive appropriate care. Since final recommendations and decisions cannot be made until the evaluation is completed, the Committee expects the transition plan to continue the current services, in some form, during the interim period. It would be counterproductive to dismantle the program before decisions are made about it's future.

MENTAL HEALTH SERVICES IN TIDEWATER, VIRGINIA

The Committee recognizes the successes of the CHAMPUS Contracted Provider Arrangement (CPA) Norfolk Demonstration Project in delivering cost-effective managed mental health services in Tidewater, Virginia. The Project has been providing mental health services to Department of Defense beneficiaries since 1986. The GAO recently documented $148 million in savings from this project due to innovative mental health and substance abuse programs, streamlined management and administrative practices, and cooperative arrangements with providers. In FY91, this project delivered quality mental health services at an average of $3,185 per admission compared to an average $12,082 per CHAMPUS admission nationally in the same year. Mental health services are usually the most expensive element of overall CHAMPUS medical care.

The Committee recommends that the Department continue the delivery of mental health services under a competitive, at-risk model in the Virginia Tidewater area at the end of the current contract and directs the application of this model to other high-cost, high utilization areas of the country, including considering the National Capital Area, with the following recommendations by GAO: that an independent quality-of-care monitor be established as well as a system to follow-up on findings and implement corrective action; that management controls to review and monitor the appropriateness of outpatient mental health care decisions be implemented; that mechanisms to ensure that beneficiaries in crisis can be stabilized and to obtain necessary assessments in an emergency department without leaving a hospital for contractor assessment be established; and that a mechanism for external and internal review of quality assurance results be established. These recommendations are deemed necessary to insure that quality of care is not jeopardized by the motivation to reduce overall costs. The Committee requests a report on these recommendations by March 1, 1994.

WALTER REED ARMY INSTITUTE OF RESEARCH

The Committee expressed its support last year for the planned Walter Reed Army Institute of Research (WRAIR), which was authorized and funded in separate legislation in 1993, and requested the Department to provide periodic reports on the status of the new facility. Congress appropriated $13.3 million for Phase I in 1993, to be made available 60 days after the Department provided Congress a long-range plan for the military medical infrastructure. The long-range plan was forwarded to Congress on March 12, 1993;

however, the Phase I funds have not been obligated. We urge the Department to make the new WRAIR a top priority among its health activities. The replacement WRAIR facility is critical to provide safe and proper housing of the Army's health research—the current facility fails to meet many safety, health, and environmental standards—research that will become increasingly important as the military implements personnel reductions in the coming years.

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES (USUHS)

The President's Report of the National Performance Review recommends the closure of the Department's medical school known as USUHS and instead accessing military physicians through the less costly Health Professionals Scholarship Program. The Committee has supported this recommendation for a number of years, and directs the Department to submit a report by January 15, 1994, on the actions that it will take, and the dollars that will be saved, in order to implement the President's recommendation and close this institution within five years.

UNIFORMED SERVICES TREATMENT FACILITIES (USTF) RECOUPMENT

The Committee has received the joint report mandated in the fiscal year 1993 Defense Appropriations bill from the Inspectors General of the Departments of Defense and Health and Human Services confirming and recommending the reimbursement to the Health Care Financing Administration (HCFA) of $7,757,000 from the Defense Department.

The Committee expects that the two Departments, HCFA and the USTFs will respect the recommendations and procedures identified in the Inspectors General report to avoid such billing practices in the future. In addition, the Committee directs the Department of Defense to work jointly with the Department of Health and Human Services in submitting proposed legislation to correct and prevent this problem in the future.

AIDS EDUCATION

The Committee remains concerned about the increase of AIDS in the uniformed services, and believes that existing "educational" resources do not provide sufficient instruction to help prevent service members and their dependents from contracting AIDS and other sexually transmitted diseases.

The Committee encourages the Department to increase its AIDS education awareness programs, utilizing the expertise of the many, nationally recognized civilian non-profit health education programs. The Committee recommends the Department incorporate a number of such programs that provide a variety of teaching strategies appropriate to all levels of military personnel.

USTF MANAGED CARE PROGRAM

The Committee was pleased to see that the Department finally implemented Congressional direction to establish reimbursement agreements with the seven USTFs nationwide to implement a new USTF managed care program known as the Uniformed Services

Family Health Plan (USFHP). Initial budget requests for this program were estimated based on projected beneficiary enrollment. Since the agreements were executed, the USTFs have begun marketing enrollment and early indications are that at least the larger USTF programs will have more prospective enrollees than initially projected. Since this managed care program is projected to be more cost efficient than CHAMPUS, the Committee believes that the funding cap on this program can be raised within available Department resources and possibly even save the Department some resources.

LEAD-BASED PAINT POISONING HAZARD

In response to this Committee's direction in fiscal year 1992, DOD began to evaluate lead-based paint hazards in housing, the primary cause of childhood lead poisoning. DOD has the opportunity to contribute directly to the concerted national effort to make U.S. housing lead-safe. However, the Committee is disturbed over DOD's failure to coordinate its technical projects with the Environmental Protection Agency (EPA) and Housing and Urban Development (HUD), the two agencies assigned primary responsibility by the "Residential Lead-Based Paint Hazard Reduction Act of 1992" (P.L. 102–550).

EPA and HUD have been given statutory mandates to develop uniform national testing protocols, cleanup standards, technical guidelines, training requirements, and worker protection practices. It is inefficient for DOD to hire consultants to attempt to "reinvent the same wheel." And it is counterproductive for DOD to develop competing sets of procedures for evaluating and reducing lead-based paint hazards. The Committee directs DOD to follow EPA regulations and HUD guidelines related to lead-based paint in housing. The Committee encourages DOD to work directly with these agencies through co-funded projects, including adding DOD housing units to the national evaluation study of lead hazard control strategies through consistent data collection and analysis. The Committee also directs the Department to continue its current level of support to the Federal interagency hotline and clearinghouse.

LAB TECH DEMONSTRATION PROJECT

The Committee recommends an additional $1,000,000 to the budget request to continue a laboratory technician health care demonstration project begun in fiscal year 1993, which was inadvertently left out of this year's budget request.

COMPOSITE HEALTH CARE SYSTEM (CHCS)

The Committee addresses the Composite Health Care System in the Information Technology section of this Report.

MEDICAL IMAGING NETWORK

The Committee recommends an additional $3,000,000 for the Department to purchase bandwidth time on a network in the State of Washington to allow the sending of medical imaging to allow doctors remote from a patient to diagnose CAT scans, X-rays, mammograms, and MRIs.

PROPOSED TRANSFER OF ORLANDO NAVAL HOSPITAL

The 1993 Defense Base Closure and Realignment Commission recommended the closure of the Naval Hospital, Orlando, Florida, due to the reduction in active-duty personnel resulting from the closure of Orlando Naval Training Center. Even though military personnel will remain in this area, the Commission determined that health care could be provided cheaper through the CHAMPUS military health insurance program. At the same time, because of the rapidly increasing number of military retirees in the central Florida area, the Department of Veterans' Affairs needs a new medical facility in this area to provide care for its eligible beneficiaries.

Therefore, the Committee urges the Secretary of the Navy to consider transferring the Orlando Naval Hospital while still fully operational, without compensation or reimbursement, to the control and jurisdiction of the Department of Veterans' Affairs. The Committee believes that this transfer would be the most efficient and cost effective way of continuing to provide services for all parties concerned.

The Committee reiterates that this recommendation in no way affects the decision of the 1993 Defense Base Closure and Realignment Commission, and should occur only upon the review, completion and adoption of a plan for such re-use by the Orlando Naval Training Center Re-Use Commission.

PROCUREMENT ITEM

DIGITAL MAMMOGRAPHY

The Committee recommends $3,500,000 to exploit defense nuclear weapon-derived technology for breast cancer early detection equipment for use in civilian and military medical applications. The Committee directs the development, testing, and evaluation of a prototype full-field, charge-coupled device (CCD)-based digital mammography system in a clinical setting at the Brooke Army Medical Center in San Antonio, Texas. This system will utilize an advanced x-ray source available at the Lawrence Livermore National Laboratory.

CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, DEFENSE

Appropriations, 1993	$518,600,000
New obligational authority, 1994:	
Estimate	433,647,000
Recommended	397,561,000
Decrease	−36,086,000

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program for fiscal year 1993:

(IN THOUSANDS OF DOLLARS)

	BUDGET REQUEST QTY	BUDGET REQUEST AMOUNT	COMMITTEE RECOMMENDED QTY	COMMITTEE RECOMMENDED AMOUNT	CHANGE FROM REQUEST QTY	CHANGE FROM REQUEST AMOUNT
CHEM AGENTS & MUNITIONS DESTRUCTION, DEF						
CHEM DEMILITARIZATION - RDTE	--	---	--	30,700	--	+30,700
CHEM DEMILITARIZATION - PROC	--	125,486	--	74,000	--	-50,000
CHEM DEMILITARIZATION - O&M	--	308,161	--	292,061	--	-16,100
TOTAL, CHEM AGENTS & MUNITIONS DESTRUCTION, DEF		433,647		397,061		-36,886

COMMITTEE RECOMMENDATIONS

APPROPRIATION LANGUAGE AND RESPONSIBILITY

The budget proposed to fund the chemical agents and munitions destruction appropriation in the Army procurement account. While managed by the Army, this appropriation has always been funded as a defense agency. The Committee finds nothing wrong with the current practice and does not approve the budget proposal.

The budget also proposed to insert bill language allowing the transfer of up to $3,000,000 between the subdivisions of the appropriation. The Committee finds nothing wrong with the current arrangement and does not approve the budget proposal.

JOHNSTON ATOLL TESTING RESULTS

Last March, the Army completed Operational Verification Testing (OVT) at the Johnston Atoll Chemical Agent Disposal System (JACADS). This testing was intended to demonstrate the efficiency and effectiveness of the technical approach which the Army has chosen to destroy all chemical weapons in the United States stockpile. The Army has stated that it is satisfied with the results; the "baseline" technology still seems to be the Army's preferred approach to chemical weapon destruction. The Committee points out, however, that OVT was not the success that is being advertised.

In Phase I of OVT, destruction of rockets filled with GB agent was tested. The test encountered numerous engineering and other problems and never achieved the goals of the facility. After expensive and time-consuming changes to the facility, Phase II (destruction of VX-filled rockets) was more successful. Towards the end of that test, the throughput goals were finally achieved on a sustained basis. Phase III (destruction of mustard-filled ton containers) also achieved program goals.

Phase IV (destruction of mustard-filled projectiles) was the least successful of all the phases. Virtually none of the processing goals was achieved. The OVT IV Report states that ". . . the projectile demilitarization system did not operate in a sustained, full production mode for a sufficient period to evaluate its long-term ability to process projectiles . . .". Problems included projectiles entering the incinerator before being drained of agent, burster removal machines that failed continuously, munition tracking problems, and (perhaps most serious) the need for virtually continuous presence of "fully suited" personnel in contaminated processing areas. The Phase IV results are particularly important because the weapons destroyed in this phase are the only ones to be destroyed at a proposed cryofracture facility, as discussed below.

The Committee requests a complete report by March 1, 1994 of all corrective actions which have had to be taken as a result of all phases of JACADS OVT, the cost of these corrections, and the source of funds to pay these costs.

CRYOFRACTURE

In last years conference report, the Army was told to submit a detailed justification and rationale if it elected to proceed without building a cryofracture plant. The Committee's position on this question remains unchanged. The decision has been delayed and the funding for cryofracture facility design is running out. The Committee believes that the design and engineering cadre for cryofracture should be retained until program changes that result from the alternative technologies recommendations are settled. The Committee encourages the use of part of the increased funds recommended for research and development for this purpose. In addition, $20,000,000 remains in unobligated fiscal year 1992 procurement funds for the cryofracture program.

ALTERNATIVE TECHNOLOGIES

Last year's authorization act mandated a study of alternative chemical weapon destruction technologies. The "baseline" technology which constitutes the current Army program involves disassembly and incineration in four different types of furnaces. The purpose of the study is to identify non-incineration approaches that offer greater safety and cost-effectiveness than the baseline approach, with acceptable technical and schedule risk. The final report, with recommendations, will be submitted to the Congress in December. When the report is submitted, it will be reviewed by Congress, local communities, and others.

The Committee believes that this report, along with the results of the recently completed Operational Verification Test at Johnson Island, will cause significant changes to the chemical weapon disposal program as it is currently structured and budgeted. In addition, if decisions are made to proceed with alternative technologies, additional research and testing will be required. For this reason, the Committee recommends an additional $25,000,000 in the research and development section of this appropriation for such work. Before these funds are obligated the Committee directs the Army to present its allocation and plan for approval.

The changes in the current chemical weapon disposal program resulting from the alternative technologies report form the basis for the Committee's recommendations to defer procurement of equipment associated with the current program.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

The budget included no funding request for research and development. The Committee recommends $30,700,000. The recommendation includes $25,000,000 for additional work on cryofracture and alternative technologies as discussed above. In addition, the Committee recommends $5,700,000 and an offsetting reduction in the procurement line. The funds were budgeted in procurement to develop a Munition Management Device. The intention

is to identify and develop concepts for a device capable of containing both blast effects and agent vapors in the event that an explosively configured item accidently detonates while being drained. This activity is part of the recently created "non-stockpile" program. The Committee supports the item but believes that it is more properly funded in research and development than procurement.

PROCUREMENT

The budget included $125,486,000 for procurement. The Committee recommends $74,800,000, a reduction of $50,686,000. The net reduction consists of the following changes:

−$5,700,000—Munition Management Device. Transferred to research and development.

−$11,000,000—DBOF Transfer.

−$19,500,000—Defer major equipment purchase at Umatilla.

−$14,500,000—Defer major equipment purchase at Pine Bluff.

OPERATION AND MAINTENANCE

The budget included $308,161,000 for operation and maintenance. The Committee recommends $292,061,000, a reduction of $16,100,000. The reduction consists of the following changes:

−$10,200,000—Anniston reconfiguration operations.

−$5,900,000—Tooele systemization.

DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE

Appropriations, 1993	$1,140,651,000
New Obligation Authority, 1994	
Estimate	1,168,200,000
Recommended	757,785,000
Decrease	410,415,000

PROGRAM RECOMMENDED

The total amount recommended in the bill will provide the following program for fiscal year 1994:

	Fiscal year 1993	Fiscal year 1994 President budget	HASC	HAC	HAC versus President budget
Military Personnel:					
Army Reserve	8,900	5,820	5,820	5,820	0
Army National Guard	122,491	123,381	123,381	123,381	0
Navy Reserve	3,800	4,374	4,374	4,374	0
Marine Corps Reserve	1,577	2,080	2,080	2,080	0
Air Force	....	13,922	13,922	13,922	0
Air Force Reserve	2,200	6,200	6,200	6,200	0
Air National Guard	41,704	28,894	28,894	28,894	0
SOC	....	720	720	720	0
Subtotal, Military Personnel	180,672	185,381	185,391	185,391	0
Operation and Maintenance:					
Army	164,668	147,428	147,428	147,428	0
Navy	247,723	240,391	240,391	240,391	0
Marine corps	10,981	10,345	10,345	10,345	0
Air Force	164,222	199,808	199,808	199,808	0
Defense Agencies	122,958	92,248	92,248	92,248	0

	Fiscal year 1993	Fiscal year 1994 President budget	HASC	HAC	HAC versus President budget
Army Reserve	6,969	7,772	7,772	7,772	0
Navy Reserve	6,207	8,197	8,197	8,197	0
marine Corps Reserve	1,572	2,329	2,329	2,329	0
Air Force Reserve	1,814	6,000	6,000	6,000	0
Army National Guard	31,515	23,654	23,654	23,654	0
Air National Guard	24,698	6,896	6,896	6,896	0
SOC	10,569	14,449	14,449	14,449	0
Undistributed Reduction			(30,000)	(180,000)	(180,000)
CMASS				(500)	(500)
OSD Support				(1,000)	(1,000)
Support to Law Enforcement			35,500	(10,000)	(10,000)
Theater CINC Support				(1,500)	(1,500)
Classified			(64,261)	(112,862)	(112,862)
Gulf States Initiative				5,900	5,900
Civil Air Patrol				400	400
Multi-jurisdictional Task Force				2,000	2,000
Police Research Institute				1,100	1,100
Subtotal, O&M	793,896	759,517	700,756	463,055	(296,462)
Procurement:					
Procurement, Army	15,737	61,263	61,263	61,263	0
Procurement, Navy	18,442	11,803	11,802	11,802	0
Procurement, MC	776	3,500	3,500	3,500	0
Procurement, AF	16,606	5,500	5,500	5,500	0
Procurement, Def Ags	26,791	36,378	36,378	36,378	0
National Guard/Reserve	25,467	21,447	21,447	21,447	0
Procurement, SOC	1,485	1,376	1,376	1,376	0
Air Force Reserve Counter-Drug Support				(4,000)	(4,000)
Classified				(58,437)	(58,437)
Undistributed Reduction				(10,000)	(10,000)
Subtotal, Procurement	105,304	141,266	141,266	68,829	(72,437)
Research, Development, Test and Evaluation					
Army	7,833	10,282	10,282	10,282	0
Navy	298	961	961	961	0
Air Force					0
Defense Agencies		70,783	70,783	70,783	0
SOC	52,648				0
Counterdrug R&D				(7,000)	(7,000)
Classified				(24,516)	(24,516)
Undistributed Reduction				(10,000)	(10,000)
Subtotal, RDT&E	60,779	82,026	82,026	40,510	(41,516)
Total, Drug Interdiction	1,140,651	1,168,200	1,109,439	757,785	(410,415)

The Committee recommends reductions to the following programs due to excessive budget growth: OSD Support (Project 9401), −$1,000,000; Theater CINC Support (Project 6415), −$1,500,000.

UNDISTRIBUTED REDUCTIONS

The Committee has recommended an undistributed reduction to the Drug Interdiction account totaling $200,000,000 in the following appropriation accounts: Operations and Maintenance—$180,000,000, Procurement—$10,000,000, Research and Development—$10,000,000. While continuing to endorse the Defense Department's participation in the nation's overall counter-drug activities, the Committee notes with serious concern, that despite the best efforts of the Department and the devotion of a significant amount of budgetary resources, illegal drugs continue to flow into

the country largely unabated. While firmly committed to all efforts in the nation's "War on Drugs", the Committee believes that the Department's current re-evaluation of its drug interdiction mission will yield substantial cost savings opportunities. The Committee will continue to work with the Department to identify appropriate levels of budgetary resources consistent with the future scope of the Defense Department's counter-drug mission.

CMASS

The Committee recommends no funding for the Counter-Drug Modeling and Simulation (CMASS) program, a reduction of $500,000 to the budget request. The Department proposed funding for CMASS in order to evaluate counterdrug operational strategies and tactics through the use of computer-assisted warganing activities. The Committee believes that significant real world opportunities exist everyday to evaluate the effectiveness of Department of Defense drug interdiction strategies and hereby denies the request.

JTF-6 TRAINING SUPPORT

The Committee recommends $8,878,000 for Joint Task Force (JTF-6) training support (Project 9499) to law enforcement agencies, a reduction of $10,000,000 to the budget request. The Committee is concerned that established procedures do not exist to govern the allocation of military support to civilian agencies for legitimate counternarcotic operations. The Committee therefore directs that no funds appropriated for training support may be obligated until the Committees on Appropriations have received a report from the Office of the Secretary of Defense detailing the criteria and procedures under which the Defense Department provides military training support to law enforcement agencies for counterdrug purposes.

AIR FORCE RESERVE COUNTER-DRUG SUPPORT

The Committee recommends a reduction of $4,000,000 for the acquisition of AAQ-22 FLIR systems for Air Force Reserve C-130 aircraft used for drug interdiction activities (Project 4000). The Committee notes that budget justification material submitted for fiscal year 1994 does not indicate a requirement or a structure acquisition plan for this program.

COUNTER-DRUG R&D

The Committee recommends $34,500,000 for Counter-Drug research and development activities (Project 1403), a reduction of $7,000,000 to the budget request. The Committee is concerned that the present development of contraband detection technologies funded under this line item lack practical employment capability for law enforcement agencies. The Committee urges the Department to consider funding contraband and cargo detection devices which have more immediate application in counter-drug operations.

GULF STATES COUNTER-DRUG INITIATIVE

The Committee has provided $5,900,000 for the Gulf States Counter-Drug Initiative (GSCI). Of this amount, $1,500,000 is for

the Regional Counter-Drug Training Academy. The remaining amount is provided for sustainment and enhancement costs for the command, control, communications, and computer (C4) network of GSGI. The Committee is aware that the Department's Office of the Assistant Secretary responsible for drug interdiction has not promptly provided funds made available by Congress for the C4 network of the GSCI. The Committee believes that funding for the GSCI program should be placed under the jurisdiction and management of the Assistant Secretary of Defense for C3I and therefore directs the Department to report to the Committee on its plans for administering the GSCI program. In the future the Committee directs the Department to budget for the GSCI program and that funding for the regional training academy be included as part of the Defense Department's funded State Governors' plans.

MULTI-JURISDICTIONAL TASK FORCE TRAINING

The Committee recommends $2,000,000 for the Multi-jurisdictional task force training program begun in fiscal year 1992 and directs the Department to fund this unique needs-based, regionally responsive, counterdrug operations program in future budget requests. The committee has provided additional funding above the budget for this program and in addition to those amounts requested and identified in this bill for National Guard Counter Drug activities. The additional funding provided by the Committee for fiscal year 1994 is made available only for the Florida National Guard to implement counterdrug operations courses developed during fiscal year 1993, including the distance learning module for public administrators.

LAND BASED AEROSTATS

The Committee is deeply concerned about what appears to be a degradation in the operational readiness of the land based aerostat radar program currently managed by the Department of the Air Force. It is the Committee's understanding that recent program management actions may jeopardize aerostat flight safety and mission availability. The Committee therefore directs the Assistant Secretary of Defense for Drug Interdiction to provide a report no later than November 15, 1993 detailing the status of the land based aerostat network and any corrective actions that need to be taken, including the activation of additional sites, to maintain an adequate rate of coverage in support of counterdrug monitoring and surveillance requirements.

NATIONAL GUARD COUNTERDRUG SUPPORT

In fiscal year 1993 the Committee appropriated $12,000,000 to acquire 12 Light Armored Vehicles (LAVs) and necessary surveillance equipment to be used by the National Guard to support activities of law enforcement agencies in the counterdrug program. An extensive evaluation of this concept in 1992 resulted in a favorable report, and the Chief of the National Guard Bureau recommended procurement of the LAVs as directed by the Committee. It is the Committee's understanding that the Department has yet to obligate these funds consistent with congressional direction. The

Committee directs that the Defense Department procure these vehicles and equipment as directed in the fiscal year 1993 Defense Appropriations Act.

LAKE COUNTY TASK FORCE

The Committee directs the Department to work with the Lake County Task Force, a regional drug interdiction agency located in northwest Indiana, to identify potential surplus military equipment and national guard assistance that can be provided to the task force in the execution of its drug interdiction mission. A report detailing the assistance provided to the task force by the Department should be provided to the Committee no later than March 15, 1994.

SOUTHWEST BORDER STATES ANTI-DRUG INFORMATION SYSTEM

The Committee strongly supports the Southwest border states anti-drug information system, a cooperative project involving regional drug enforcement agencies in California, Arizona, New Mexico, and Texas, and considers the initiative to be within the scope of the Department's counter-drug mission. The Committee directs the Department to continue with plans to complete this important initiative.

POLICE RESEARCH INSTITUTE

The Committee has provided $1,100,000 for the establishment of a Police Research Institute as a collaborative effort between the Department of Defense and a Texas criminal justice center with a State legislative mandate to assist State and local law enforcement agencies to develop anti-crime strategies. This effort would evaluate new ways that State and local police administrators can benefit from Department of Defense technology, expertise, and personnel in the area of counter-drug and interdiction operations. The Committee believes that this initiative is consistent with the Department's statutory mission in the counterdrug and interdiction area.

A report on this initiative should be provided to the Committee no later than March 15, 1994.

CIVIL AIR PATROL

In view of the expanding missions and relative cost-effectiveness of the Civil Air Patrol, the Committee recommends an increase of $400,000 to the fiscal year 1994 budget request for Civil Air Patrol drug interdiction activities. These funds are to be used for Civil Air Patrol operational and training drug reconnaissance missions for federal, state, and local government agencies; for administrative costs, including the hiring of Civil Air Patrol employees; for travel and per diem expenses of Civil Air Patrol personnel in support of those missions; and for equipment needed for mission support or performance. The Department and Air Force should waive reimbursement from the federal, state and local government agencies for use of these funds.

CLASSIFIED PROGRAMS

Details of adjustments made to classified programs are discussed in the classified report.

OFFICE OF THE INSPECTOR GENERAL

Fiscal year 1993 appropriation	$126,000,000
Fiscal year 1994 budget request	127,601,000
Committee recommendation	169,801,000
Change	+42,200,000

The Committee recommendation transfers $37,700,000 from the military services' criminal investigative organizations, as recommended by the House Armed Services Committee, to the Office of the Inspector General for consolidating the major procurement fraud mission within the Department. In addition, the Committee recommends an additional $4,500,000 for other increased investigative and audit functions.

TITLE VII

RELATED AGENCIES

NATIONAL FOREIGN INTELLIGENCE PROGRAM

INTRODUCTION

The National Foreign Intelligence Program consists of those intelligence activities of the Government which provide the President, other officers of the Executive Branch, and the Congress with national foreign intelligence on broad strategic concerns bearing on U.S. national security. These concerns are stated by the National Security Council in the form of long-range and short-range requirements for the principal users of intelligence, and include political trends, military balance trends, economic trends, treaty monitoring and support to military theater commanders.

The National Foreign Intelligence Program budget funded in the Department of Defense Appropriations Act consists primarily of resources of the Central Intelligence Agency; the Office of the Secretary of Defense; the Defense Intelligence Agency; the National Reconnaissance Office; the National Security Agency; the Departments of the Army, Navy and the Air Force; the Community Management Staff; and the CIA Retirement and Disability System Fund.

REQUIREMENTS

With the dissolution of the Soviet Union, the potential proliferation of nuclear, biological, and chemical weapons in unstable regions of the world, and the continuing need to support military contingency operations around the globe, an effective intelligence capability is vital to the national security of the United States. However, intelligence consumers must better define and prioritize the threats to interests of the national security of the United States. Rather than have the intelligence requirements process result in a broad, comprehensive compilation of every imaginable threat and contingency which could be addressed by the intelligence community, the Committee believes it is time to conduct a rigorous review and evaluation to determine the most crucial information requirements in an era of scarce budget resources.

The need for such a comprehensive view is clearly demonstrated by a June 8, 1993 report to the Director of Central Intelligence from the National Intelligence Council that discusses recent intelligence collection management "failures". The Committee is deeply concerned that this senior independent intelligence advisory board for the DCI termed such events as being "symptomatic of other collection issues". While the details are highly classified, it is clear that such problems are not related to any particular budget level

for the NFIP, but rather appear to be directly related to difficulties that the intelligence community is having in reorienting its collection priorities from the cold war to new and different challenges. The Committee believes that the current threats to the U.S. and its interests include non-proliferation, counterterrorism and tactical support to deployed military forces. It is requested that the Director of Central Intelligence provide a report to the Congress addressing these recent concerns expressed by the National Intelligence Council.

Because of the sensitive nature of intelligence programs, much of the debate over specific programs occurs outside of the view of the American public. The Committee, therefore, takes its intelligence oversight responsibilities especially seriously. It is in this context that the Committee is dismayed over recent actions by the National Reconnaissance Office.

In the Conference Report accompanying the fiscal year 1993 Defense Appropriations Act, the NRO was specifically directed not to award a contract to start a multi-billion dollar program without first obtaining explicit prior Congressional approval. This direction was included because of concerns by both the House and Senate conferees that the program was too costly and did not adequately meet certain requirements. By providing the funding with the prior approval caveat, the conferees believed that the DCI could be given an opportunity to address these Congressional concerns without delaying an important program for another year. However, in late June, the Committee learned by accident that the NRO had awarded this contract on May 25th without notifying any of the Congressional oversight Committees.

The need to limit access to intelligence programs due to their sensitive nature does not provide program managers relief from complying with specific Congressional direction. Nor should it limit the public's right to know when specific Congressional direction is ignored without revealing any program specifics. Based upon the results of current investigations by the DOD Inspector General and the General Counsel, the Committee directs that the Director of Central Intelligence review the adequacy of intelligence community procedures for ensuring that special access programs comply with Congressional intent and provide a written assessment of any corrective measures needed, if any, to ensure that such episodes are not repeated.

Last year this Committee as well as the Appropriations Conferees directed in report language that a majority of the members of all boards, committees, and panels that develop intelligence requirements be intelligence users. In an era of severely restricted funding, it is ever more important that intelligence priorities be assigned by those consumers whose programs and very lives depend upon good intelligence. Examples of such consumers are military commanders-in-chiefs, State Department officials representing U.S. interests abroad, U.S. trade negotiators, and arms control representatives. It appears that the intelligence community does not intend to implement the conference direction despite a Committee letter this spring reminding them of the requirement. The Committee firmly believes that sound management principles dictate that the ultimate consumers—not those charged with collecting and

analyzing—of national intelligence must determine intelligence requirements. Consequently, the Committee has included a general provision prohibiting the use of appropriated funds for any intelligence requirements board, committee, or panel which is not composed primarily of intelligence consumers.

JUSTIFICATION MATERIAL

The Committee has included a new general provision requiring that the NFIP submit revised budget justification material in support of its fiscal year 1995 request. The Committee has taken this action to ensure that there is a complete explanation of all funds being requested. The Committee has historically used a "zero-based" methodology in reviewing intelligence programs. However, it has become increasingly more difficult to do so with the ever larger portion of the intelligence budget that is defined to be a part of the "base" or "ongoing" levels from programs approved in previous years. The Committee reserves the right not only to refuse to provide funds for new programs, but also to terminate old programs for which there is no longer adequate justification.

Article 1, Section 9, of the U.S. Constitution states that "no money shall be withdrawn from the Treasury but in consequence of Appropriations made by law." It is the Committee's policy that no funds will be appropriated without a clear and complete explanation. To the extent adequate justification is not provided, on March 1, 1994 any such program will be automatically terminated.

BUDGET REQUEST

The Committee notes that between 1982 and 1992, budgetary resources devoted to the Intelligence Community have grown in real terms by over 100 percent. Over the same time period, the overall defense budget—excluding the intelligence budget which is contained within the defense budget—grew by only 5 percent in real terms. In other words in a time that saw a significant expansion of the defense budget, the budget of the intelligence community grew at a rate that was twenty times faster in real terms. In addition, the level of intelligence personnel in the National Capital Region has grown 70 percent over the same time period.

The fiscal year 1994 budget request for the National Foreign Intelligence Program includes significant real growth over the fiscal year 1993 actual spending level. As discussed below and in the classified report which accompanies this report, the Committee believes that it is important to maintain a robust national intelligence capability and to permit intelligence programs to be funded at a substantially higher level than is being proposed and provided for DOD programs. However, after a thorough review of the individual components of the NFIP through hearings as well as direct discussions with the Director of Central Intelligence, the Committee believes that these programs can be fully funded by providing the same level of funds that will actually be spent in fiscal year 1993. While this freeze in funding will require the NFIP to absorb the impact of inflation in fiscal year 1994, the Committee believes this will be possible through improved program management, increased efficiency, and continued elimination of programs created

to fight and win the Cold War. The Committee has, therefore, included a reduction of $880,428,000 to the fiscal year 1994 request. The details of this adjustment are provided in the classified report and Annex.

The Committee has recommended a general provision mandating a reduction of 4 percent to NFIP personnel levels when compared to fiscal year 1992 levels.

The Committee believes that reductions to the intelligence budget can be accomplished in a manner which retains a robust capability to address the most crucial security issues which affect the country. The Committee is also prepared to work closely with the Defense Department and the Intelligence Community in this endeavor.

Classified Report and Annex

Because of the highly sensitive nature of intelligence programs, the results of the Committee's budget review are published in a separate, detailed and comprehensive classified Annex and report. The intelligence community, Department of Defense and other organizations are expected to comply fully with the recommendations and directives in the classified Annex and report accompanying the fiscal year 1994 DOD Appropriations Act.

CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM FUND

Appropriations, 1993	$168,900,000
New obligational authority, 1994:	
Estimate	182,300,000
Recommended	182,300,000
Change	0

The Central Intelligence Agency Retirement Act of 1964 for Certain Employees (P.L. 88–643) authorized the establishment of a CIA Retirement and Disability System (CIARDS) for a limited number of CIA employees, and authorized the establishment and maintenance of a Fund from which benefits would be paid to qualified beneficiaries.

Because of the sensitive nature of the CIA mission, it is inherently difficult for the public to gain access to the numerical details of the CIARDS request of $182,300,000. It is therefore incumbent upon the Congress to exercise diligent oversight of this account.

A recent report to the Committee conducted by the Surveys and Investigations Staff found:

> The Fund's net worth was estimated at $716.5 million at the end of fiscal year 1992;
>
> It will continue to increase in net worth until fiscal year 2001, at which point it will be required to start selling its investment assets to cover its expenses; and
>
> Between fiscal years 1990 and 2033, the aggregate amounts appropriated will have totaled $19.4 billion.

According to the report, the Fund's financial outlook is bleak. First, the CIARDS has been consistently underfunded by the CIA since its inception. Second, by fiscal year 2017 the Fund will be insolvent. Finally, by fiscal year 2033 when it is anticipated that there will be no more claims against the Fund, it will be $2.5 bil-

lion in debt despite the appropriation of nearly $20 billion into the account.

The Committee is very concerned that the Director of Central Intelligence take immediate action to address the above problems. Every effort must be made to ensure that the retirement fund is solvent. Moreover, to the extent that insufficient appropriations are requested each year to cover the retirement liabilities of the Fund, the actual cost of the National Foreign Intelligence Program is understated.

The Committee directs that the Director of Central Intelligence provide by February 1, 1994 a long-term plan to pay off the current unfunded liability. In addition, it is anticipated that the fiscal year 1995 budget request for CIARDS will be sufficient to cover the true liability being incurred in fiscal year 1995 so that the size of the unfunded liability is not permitted to increase.

The Committee has nothing but praise for the retired and disabled former CIA employees who honorably and anonymously served their country during the Cold War with little or no personal recognition because of the highly classified nature of their chosen profession. The Committee is confident that the intelligence community will pursue restoration of the solvency of this fund with the same sense of priority with which it pursues new technology and equipment.

COMMUNITY MANAGEMENT STAFF

Fiscal year 1993 appropriation	$77,700,000
Fiscal year 1994 budget request	105,788,000
Committee recommendation	114,688,000
Change	8,900,000

The Community Management Staff assists the Director of Central Intelligence (DCI) in executing his responsibilities as manager of the Intelligence Community. The President's Budget requested $105,788,000 for the Community Management Staff. However, this does not include funds for the DCI's staff or community wide programs. Therefore, the Committee transfers $37,900,000 which has been identified as DCI funds, from the Central Intelligence Agency to the Community Management Staff. Furthermore, the Committee directs the DCI to identify by conference any other funds requested by the Central Intelligence Agency that directly support the DCI.

In FY 1993, the Congress appropriated $2,600,000 to the Community Management Staff for a task force to develop scientific data requirements and perform preliminary assessments of classified systems and data bases that would aid the environmental scientific community. This year the President requests $29,000,000 to continue this effort. Although a number of intelligence systems that are of interest have been identified, the Community Management Staff states that the applicability of these systems and data to scientific problems remains uncertain. The Committee applauds the efforts of the Community Management Staff in this area; however, the increased growth is not justified. Therefore, the Committee terminates all funding for this program. The Committee recommends $114,688,000 for the Community Management Account.

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NATIONAL SECURITY EDUCATION TRUST FUND

Fiscal year 1993 appropriation	$10,000,000
Fiscal year 1994 budget request	24,000,000
Committee recommendation	0
Change	−24,000,000

In fiscal year 1991, the Congress appropriated $150,000,000 for the National Security Education Trust Fund. The Congress intended that funds would be appropriated from the interest earned on the trust fund to award scholarships and grants to United States college students studying abroad. In light of declining budgets and a shrinking intelligence workforce structure, the Committee believes that the potential benefits derived from the program do not merit the cost.

The President's Budget requests $24,000,000 to be appropriated from the National Security Education Trust Fund. The Committee recommends termination of the program, directs all prior year unobligated funds to be rescinded, and directs the monies in the trust fund be rescinded.

TITLE VIII

GENERAL PROVISIONS

The accompanying bill includes 125 general provisions. Most of these provisions were included in the Department of Defense Appropriations Act for fiscal year 1993 and many have been included in the Defense Appropriations Act for a number of years.

Actions taken by the Committee to amend last year's provisions or new provisions recommended by the Committee are discussed below or in the applicable section of the report.

BUY AMERICAN REQUIREMENTS

The budget proposes to delete several general provisions placing restrictions on purchases outside the United States. The Committee recommends the continuation of sections 8026, 8029, 8065, 8066, and 8069.

Limitations on Purchases: Last year, the Committee recommended that the section which placed limitations on purchases from other than domestic sources be made permanent since it had been carried in Defense Appropriations Acts for many years. The Committee recommends a technical correction to last year's action.

Multibeam Sonar Mapping System: The Committee recommends amending the section which requires the procurement of Multibeam Sonar Mapping Systems manufactured in the United States to include supporting software and systems engineering in the United States.

Aircraft Fuel Cells: The Committee recommends a new general provision (section 8090) which prohibits funds to procure aircraft fuel cells unless they are produced or manufactured in the United States by a domestic-owned and domestic-operated entity.

HEATING PLANTS IN EUROPE

Language was included in last year's Act which provided authority and encouraged the Secretary of the Air Force to enter into cost-effective agreements for required heating facilities in the Republic of Germany. The Committee requests the Air Force and Army to implement the direction provided in previous years' Defense Appropriations Acts and conference reports.

CORPS OF ENGINEERS

A new general provision (section 8096) is proposed which places limitations on the numbers and compensation for the Senior Executive Service positions, including that of the Acting Assistant Secretary, within the Office of the Assistant Secretary of the Army for Civil Works.

The Committee expresses its strong concern with the lack of responsiveness exhibited by the Assistant Secretary's office to Congressional intent, especially by the incumbent Acting Assistant Secretary. The office was not established to alter Congressional direction or micro-manage Corps of Engineers activities. Over the past years, the Office of the Assistant Secretary has become very unresponsive to the concerns and priorities of Congress. The Committee intends the Assistant Secretary's office to follow the provisions set out in legislation and its accompanying reports.

Until these improvements are undertaken, the Committee recommends that the Office of the Assistant Secretary of the Army for Civil Works be cut back.

SAFEGUARD C PROHIBITION

Given the current efforts in Congress and the Administration to limit nuclear weapons testing and negotiate a comprehensive nuclear test ban, the Committee recommends the inclusion of a provision to delete funds for the joint DOD–DOE Safeguard C contingency nuclear testing program, since resumption of tests in the atmosphere, space, or the oceans is no longer a realistic possibility.

EARLY RETIREMENT PAYMENTS

The Committee has included a new general provision that provides that retired pay of those military personnel retired under the temporary early retirement authority provided in Section 4403 of the Fiscal Year 1993 Authorization Act will be paid from the active military personnel accounts instead of the Department of Defense Military Retirement Fund.

NAVY ADP/PERSONNEL ACTIVITIES

The Committee prohibits funds from being used by the Navy and Department of Defense for certain data processing center, Defense Management Report Decision (DMRD) 918, information infrastructure, finance and accounting and personnel consolidations, plans, disestablishments, or realignments that adversely impact the Enlisted Personnel Management Center (EPMAC), the Naval Reserve Personnel Center (NRPC), and the Naval Computer and Telecommunications Station (NCTS) and Defense Accounting Office (DAO), New Orleans. This prohibition on funding remains in effect until 60 legislative days after the Secretary of Defense and Comptroller General provide a report to the Committees on Appropriations justifying and certifying DoD actions.

The fiscal year 1993 Defense Appropriations bill and report contained some similar restrictions, including reporting requirements, restrictions, and conditions on DoD data processing center consolidations. Nevertheless, DoD, through the Defense Information Systems Agency (DISA), internationally chose to circumvent Congressional oversight and submitted a DoD Data Center Consolidation to the Defense Base Closure and Realignment Commission (BRAC) that designated 15 data processing megacenters and disestablished 44 data processing centers. Consolidating like operations with a goal towards computer commonality is meritorious in many instances. However, DoD and DISA submitted their DoD Data Cen-

ter Consolidation to the BRAC prior to meeting any of the conditions and reporting requirements to Congress as required by Section 9047 Public Law 102–396, the 1993 Defense Appropriations bill. DISA's justifications for submitting the consolidation to the BRAC clearly stated that their major reason for doing so was to circumvent Congressional restrictions. DISA's justification also admitted that every data processing center disestablishment recommended by DISA was below the numerical thresholds in the base closing law (10 U.S.C. 2687) that require closure and realignment actions by DoD to be submitted in the BRAC process. While closures and realignments below threshold are not prohibited from being included in the BRAC process, a review by the Library of Congress American Law Division of section 9047, P.L. 102–396, found that if closure or realignments were below the thresholds in 10 U.S.C. 2687 the base closing law does not require such actions to be placed in the BRAC process. The Library of Congress review went on to say that "under such circumstances, the strictures of section 9047 of the FY1993 Defense Appropriations Act could not lawfully be circumvented by simply including the consolidation plan in the Department's recommendation to the Base Closure Commission".

Moreover, the DISA DoD Data Center Consolidation is part of the Defense Management Report Decision (DMRD) 918, another DoD management initiative. DMRD 918 was 6 months old when DISA submitted their consolidation to the BRAC. Since DoD approved DMRD 918 in September, 1992, projected cost savings under this initiative have fallen from $12 billion to $4.5 billion. DoD justifications and DMRD 918 implementation plans also admit that DMRD 918 and the megacenters created in the DISA consolidation will be financially operated under the Defense Business Operations Fund (DBOF) whose expansion Congress has prohibited.

The Committee makes every effort not to interfere in the BRAC process and has agreed at this time not to preclude DoD from moving ahead with the consolidation as approved by the Defense Base Closure and Realignment Commission. However, the Committee directs the Secretary of Defense and Department not to use the BRAC process in the future to circumvent Congressional oversight or legislative restrictions that impact below threshold data processing, defense information infrastructure, DMRD, or DBOF initiatives. The Committee also supports the Navy's request to defer DoD operational control and capitalization of the data center at the Enlisted Personnel Management Center until disestablishment occurs as planned by the base closing commission in 1996. Operational control and capitalization of the Naval Computer and Telecommunications Station, New Orleans, data center should also be deferred until its disestablishment occurs. The Committee expects the Comptroller General to provide an analysis as to whether or not the DoD Data Center Consolidation submitted to the Defense Base Closure and Realignment Commission violates the funding restrictions and reporting requirements of section 9047, P.L. 102–396. The Committee directs the Department to provide a breakout of the investment and operating costs of each megacenter designated in the DoD Data Center Consolidation. The Committee also directs that for any planned or future data processing, finance and

accounting, and personnel center or function consolidations or closures below threshold, the Secretary of Defense develop criteria for such actions that are primarily weighted to evaluate, measure and compare how data processing centers, central design activities, finance and accounting and civilian and military personnel functions and activities are ranked in terms of operational readiness, customer satisfaction, and the most cost effective and least expensive from a business performance and regional operations standpoint. While the DoD and DISA criteria used for picking megacenters in its DoD Data Center Consolidation measured facilities, security, and communications operations, the only measurement of cost effectiveness was a cost of living factor which was only weighted ten percent. None of the 15 criteria used by DoD actually compared data centers and the megacenters selected in terms of business performance, actual operations costs, or cost effectiveness of service provided to customers.

Pentagon Renovation

Sec. 8081 has been amended prohibiting the construction of any building not an integral part of the present Pentagon building. Additional floor space within the Pentagon will be made available through renovation, headquarters downsizing, and transfer of nonessential functions to other locations. Floor space will be reallocated to accommodate the movement of Headquarters, Marine Corps, to the Pentagon. Not later than March 1, 1994, the Secretary of Defense shall submit to the Committees on Appropriations and Armed Services of the House and Senate a report setting forth (1) a revised renovation program for the Pentagon Reservation, which eliminates the construction of a separate Pentagon Maintenance Facility; and (2) a time-phased floor space allocation plan for the Pentagon, which accommodates the Headquarters, Marine Corps.

The Committee reduced $18 million from the budget request which would have been paid to the Pentagon Reservation Maintenance Revolving Fund to construct the Pentagon Maintenance Facility.

Compensation From Peru

The Committee has included a new general provision that seeks the payment of compensation from the Government of Peru. The Committee strongly encourages the Department of Defense, in concert with the Department of State, to aggressively pursue the issue of compensation of the United States crewmen who were killed and injured by Peruvian Air Force jets on April 24, 1992 while operating an Air Force C–130 aircraft. The Committee believes the United States government should take appropriate steps to recognize the victims and families of crewmen involved in this incident. The Committee directs the Department of Defense to report back to the Committee on the status of its efforts to obtain compensation. This reporting requirement will expire once the Government of Peru has paid compensation.

The Committee met with the crew in Panama after the incident and was most impressed with their courage and professionalism.

The Committee notes that the crew received a trophy as opposed to medals, which, from the Committee's perspective they clearly deserve. The Committee directs the Secretary of Defense to review the Air Force's decision to not award medals to the individual crewmembers.

CURIOS AND RELICS

The Committee has added a new general provision which clarifies current legislation on curios and relics. The Committee's language intends to permit unrestricted importation of curio and relic firearms that had been provided to foreign governments under a security assistance or sales program of the United States. The new language will amend provisions in the Arms Export Control Act and the Foreign Assistance Act to permit foreign governments to transfer curio and relic firearms to an importer with U.S. notification.

REPORT ON U.N. PEACEKEEPING

The Committee directs that the President provide to the Committees on Appropriations, ten days after enactment of this legislation, a report on Administration plans to strengthen United Nations Peacekeeping activities which would include: (1) copies of Presidential Decision Directive (PDD)–13 and its annex Presidential Review Document (PRD)–13, (2) the original and final individual agency estimates of the costs of the proposed U.S. reform package, (3) the budgetary implications of U.S. contributions of goods, services and personnel to U.N. peacekeeping, (4) proposals to change current budget reporting requirements to Congress, (5) any proposals to change Public Law 79–264 as amended. The Committee believes that in light of recent events in Somalia, any attempt to increase U.S. participation in peacekeeping activities must first be fully debated by Congress.

DEFINITION OF PROGRAM, PROJECT, AND ACTIVITY

For purposes of the Balanced budget and Emergency Deficit Control Act of 1985 (Public Law 99–177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119) and by the Budget Enforcement Act of 1990 (Public Law 101–508), the following information provides the definition of the term "program, project, and activity" for appropriations contained in the Department of Defense Appropriations Act. The term "program, project, and activity" shall include the most specific level of budget items, identified in the Department of Defense Appropriations Act, 1994, the accompanying House and Senate Committee reports, the conference report and accompanying joint explanatory statement of the managers of the Committee on Conference, the related classified annexes, and the P–1 and R–1 budget justification documents as subsequently modified by Congressional action.

In carrying out any Presidential sequestration, the Department of Defense and agencies shall conform to the definition for "program, project, and activity" set forth above with the following exception:

For the Military Personnel and the Operation and Maintenance accounts, the term "program, project, and activity" is defined as the appropriations accounts contained in the Department of Defense Appropriations Act.

The Department and agencies should carry forth the Presidential sequestration order in a manner that would not adversely affect or alter Congressional policies and priorities established for the Department of Defense and the related agencies and no program, project, and activity should be eliminated or be reduced to a level of funding which would adversely affect the Department's ability to effectively continue any program, project and activity.

HOUSE OF REPRESENTATIVES REPORTING REQUIREMENTS

The following items are included in accordance with various requirements of the Rules of the House of representatives:

CHANGES IN APPLICATION OF EXISTING LAW

Pursuant to clause 3 of rule XXI of the House of Representatives, the following statements are submitted describing the effect of provisions which directly or indirectly change the application of existing law.

Language is included in various parts of the bill to continue ongoing activities which require annual authorization or additional legislation, which to date has not been enacted.

The bill includes a number of provisions which place limitations on the use of funds in the bill or change existing limitations and which might, under some circumstances, be construed as changing the application of existing law.

The bill includes a number of provisions, which have been virtually unchanged for many years, that are technically considered legislation.

The bill provides that appropriations shall remain available for more than one year for some programs for which the basic authorizing legislation does not presently authorize such extended availability.

In various places in the bill, the Committee has earmarked funds within appropriation accounts in order to fund specific programs.

The bill includes a number of provisions which make portions of the appropriations subject to enactment of authorizing legislation.

Those additional changes in the fiscal year 1994 bill, which might be interpreted as changing existing law, are as follows:

APPROPRIATION LANGUAGE

Language has been included in "Operation and maintenance, Army" that $880,200,000 shall be derived by transfer from the Defense Business Operations Fund and $150,000,000 shall be derived by transfer from the National Defense Stockpile Transaction Fund.

Language has been included in "Operation and maintenance, Navy" that $1,092,700,000 shall be derived by transfer from the Defense Business Operations Fund and $150,000,000 shall be derived by transfer from the National Defense Stockpile Transaction Fund.

Language has been included in "Operation and maintenance, Navy" that funds shall be available to connect residences in the vicinity of the Naval Air Warfare Center, Warminster, to the municipal water supply system.

Language has been included in "Operation and maintenance, Air Force" that $941,400,000 shall be derived by transfer from the Defense Business Operations Fund and $200,000,000 shall be derived by transfer from the National Defense Stockpile Transaction Fund.

Language has been included in "Operation and maintenance, Air Force" earmarking $15,500,000 for the Tactical Interim CAMS and REMIS Reporting System (TICARRS).

Language has been included in "Operation and maintenance, Air Force" which directs that TICARRS be maintained as the supporting system for the F–15, F–16 and F–117A aircraft by a certain timeframe.

Language has been included in "Operation and maintenance, Air Force" which directs that none of the funds appropriated shall be used for any automated maintenance management system for the F–15, F–16 and F–117A aircraft other than TICARRS.

Language has been included in "Operation and maintenance, Air Force" which earmarks funds for the Women in Military Service For America Memorial Foundation, Inc.

Language has been included in "Operation and maintenance, Navy Reserve" to place the Naval Reserve Personnel Center under the Commander, Naval Reserve Command.

Language has been included in "Operation and Maintenance, Army National Guard" that earmarks $10,000,000 for a National Guard Outreach Program.

Language has been included in "Operation and maintenance, Air National Guard" that earmarks funds for the operation of C–130H operational support aircraft.

A new appropriation paragraph "Support of International Sporting Competitions, Defense" has been added and appropriates $6,000,000 for this activity.

A new appropriation paragraph "Global Cooperative Initiatives, Defense-wide" has been added and appropriates $383,000,000 for peacekeeping missions, humanitarian assistance and disaster relief operations.

A new appropriation paragraph "Former Soviet Union Threat Reduction" has been added and appropriates $400,000,000 for this activity.

Language has been included in "Procurement of Ammunition, Army" that transfers $100,000,000 from the Conventional Ammunition Working Capital Fund.

Language has been included in "Shipbuilding and Conversion, Navy" that the last vessel of the T–AGS 60 oceanographic research ship program may be procured as an option to the contract for the construction of the lead ship of the class.

Language has been included in "Shipbuilding and Conversion, Navy" that prohibits funds to be obligated for T–AGS multibeam sonar systems without prior approval by the Committee.

Language has been included in "Other Procurement, Navy" that earmarks funds for equipment purchases for specific offices, and provides that all Naval and Marine Corps personnel central design

activities be centrally managed; requests a report; and maintains the Reserve Financial Management System shall remain colocated with the Commander Naval Reserve Forces.

Language has been added to "Aircraft Procurement, Air Force" which earmarks $20,000,000 of funds appropriated only for the C–130J aircraft.

Language has been included in "Procurement, Defense-wide" for the High Performance Computer Modernization plan.

A new appropriation paragraph "Defense Production Act Purchases" has been added for Department of Defense activities pursuant to sections 108, 301, 302, and 303 of the Defense Production Act of 1950, as amended.

Language has been included in "Research, Development, Test and Evaluation, Army" that earmarks funds for the Center of Excellence in Breast Cancer at the National Naval Medical Center.

Language has been included in "Research, Development, Test and Evaluation, Army" that earmarks funds for develpment for the treatment of hypoglycemia.

Language has been included in "Research, Development, Test and Evaluation, Navy" which amends the words Aegis destroyer variant commonly known as "DDV" to "Flight IIA", and adds "display" to the capabilities which may not be duplicated between the Aegis and Ship self-defense programs.

Language has been included in "Research, Development, Test and Evaluation, Navy" that available funds shall be for the Aegis Combat System Engineering tactical display simplification only to develop equipment on an interim basis.

Language has been included in "Research, Development, Test and Evaluation, Navy" that funds appropriated for the Aegis Combat System Engineering tactical display simplification may not be obligated on contracts which include production options for ship installations after a certain date.

Language has been included in "Research, Development, Test and Evaluation, Navy" that funds appropriated for the E–2C aircraft upgrades may not be obligated until DOD submits a plan to Congress.

Language has been included in "Research, Development, Test and Evaluation, Navy" that funds appropriated for development of the L–X ship may not be obligated unless the baseline design of the ship includes certain capabilities.

Language has been included in "Research, Development, Test and Evaluation, Navy" that funds appropriated for the Naval Research Laboratory may not be obligated unless the manufacturing technology program office is located at an organizational level commensurate with its responsibilities and funding.

Language has been added to "Research, Development, Test and Evaluation, Air Force" to earmark $21,000,000 for the Joint Seismic Program and Global Seismic Network.

Language has been added to "Research, Development, Test and Evaluation, Air Force" to earmark $60,000,000 for the National Center for Manufacturing Sciences.

Language has been included in "Research, Development, Test and Evaluation, Defense-wide" that directs the Ballistic Missile De-

fense Organization to continue its current acquisition strategy for the PAC–3 missile.

Language has been included in "Research, Development, Test and Evaluation, Defense-wide" that prohibits funds to be used to operate more than one external affairs office for ballistic missile defense programs in the Washington, DC area.

Language has been included in "Research, Development, Test and Evaluation, Defense-wide" that earmarks competitive funds for historically black colleges or universities.

Language has been included in "Research, Development, Test and Evaluation, Defense-wide" that places a limitation on funds appropriated for the High Performance Computing initiative for technology utilizing parallel vector processing architecture.

Language has been included in "Research, Development, Test and Evaluation, Defense-wide" that electric vehicle, fuel cell, natural gas or coal research shall be conducted jointly with the Secretary of Energy and in accordance with the applicable provisions of the Energy Policy Act of 1992 and other relevant statutes.

Language has been included in "Research, Development, Test and Evaluation, Defense-wide" that earmarks funds for the Computer-aided Acquisition and Logistics Support (CALS) Shared Resource Center program to be operated by the current nonprofit institution, and that the program management office be located within the Office of the Secretary of Defense.

Language has been included in "Research, Development, Test and Evaluation, Defense-wide" that earmarks funds only for cell adhesion molecule research.

Language has been included in "Developmental Test and Evaluation, Defense" that changes the Deputy Director of Defense Research and Engineering (Test and Evaluation) title to Director, Test and Evaluation.

Language has been included in "Defense Business Operations Fund" that prohibits any funds to be used for any hardware procurement, new development, or expansion of the Defense Business Management System.

Language has been included in "National Defense Sealift Fund" which allows transfer of $200,000,000 to the Secretary of Transportation for loan guarantees and specifies conditions for making loan guarantee commitments.

Language has been included in "Defense Health Program" that requires the DoD to contract for mail service pharmacy in additional states as well as each base closure area not supported by an at-risk managed care plan.

Language has been included in "Defense Health Program" that available funds shall be for the continuation of the cooperative program model at Madigan Medical Center for severely behavior disordered students.

Language has been included in "Chemical Agents and Munitions Destruction, Defense" that includes for destruction of other chemical warfare materials that are not in the chemical weapon stockpile.

A new appropriation paragraph "National Security Education Trust Fund" has been added that rescinds $150,000,000.

GENERAL PROVISIONS

Section 8002 has been amended to delete the limitation concerning foreign national employees in the Republic of the Philippines and in the Republic of Turkey.

Section 8005 has been amended to make a technical correction to section 9005 of last year's Act.

Section 8008 has been amended to delete one subsection concerning use of United States coal in Europe.

Section 8011 has been amended to delete certain multiyear procurement contracts.

Section 8019 has been amended that allows Fisher House Investment Trust Fund interest to be used to support the operation and maintenance of Fisher Houses.

Section 8023 has been amended providing that the automated information systems oversight review board will be independent of any other Department review function and chaired by the ASD(C3I) and provides that no new automated information systems may be developed unless the senior DoD official certifies that this new system is not duplicative of any other system; provides a funding limitation on data center consolidation costs and earmarks funds for the procurement or lease of ADP equipment and software for the DOD Data Center Consolidation plan.

Section 8023 has been amended to provide open systems capability to the Composite Health Care System and provides for the inclusion of anatomic pathology and blood components.

Section 8025 has been amended that DoD shall competitively award contracts for at least four new region-wide contracts with certain requirements.

Section 8025 has been amended to provide for managed health care in the Homestead catchment area.

Section 8025 has been amended to provide consistent benefits, preemption, and certification requirements for managed health care contracts.

Section 8025 has been amended that expands the Tidewater Mental Health Demonstration.

Section 8028 has been amended for the RCAS program to add language relating to computer purchases.

Section 8032 has been amended to delete the Joint Integrated Avionics Working Group standard avionics specifications on certain aircraft, but retain previous language requiring identification of software costs in defense acquisitions in those instances where software is considered to be a major category of cost.

Section 8035 has been amended to revise requirements on Navy automation facilities.

Section 8036 has been amended to delete the permanent proviso on residual value settlements.

Section 8050 has been amended to make a technical correction concerning wage rates for civilian employees in health care occupations.

Section 8051 has been amended to prohibit funds from being used to reduce medical and medical support personnel end strength.

Section 8053 has been amended to change the name of the weather reconnaissance squadron.

Section 8056 has been amended to delete the earmark to reimburse the Department of Justice for support to the National Drug Intelligence Center and a technical correction to Public Law 102–172.

The Committee recognizes the importance and functions of the El Paso Intelligence Center of the Drug Enforcement Administration and does not intend for the NDIC to duplicate or conflict with EPIC in any way.

Section 8059 has been amended to restrict not only the procurement of multibeam Sonar Mapping Systems not manufactured in the United States, but also the supporting software and systems engineered outside the United States.

Section 8062 has been amended to make technical changes to clarify eligibility requirements for CHAMPUS disabled care.

Section 8064 has been amended to delete one subsection concerning restrictions on financing DOD Federally Funded Research and Development Centers.

Section 8066 has been amended that prohibits funds to be used to purchase equipment for sealift ships unless they are manufactured in the United States. It is the intent of the committee that the systems or equipment specified in the provision be produced in the United States in order to help protect the base of domestic manufacturers capable of preducing such systems or equipment. The committee believes that domestic manufacturing includes more than final assembly, and every effort should be made to ensure the individual components of the systems or equipment are manufactured, tested, and qualified in the United States rather than abroad.

Section 8068 has been amended that requires the Senior Acquisition Executive, with power of delegation, to certify that successful public and private bids include comparable estimates of all costs.

Section 8070 has been amended that earmarks funds for the cleanup of hazardous waste contamination at Hamilton Air Force Base, and provides for other requirements to complete the cleanup.

Section 8073 has been amended to make a technical change concerning the Voluntary Separation Incentive Fund.

Section 8078 has been amended that earmarks funds for the Uniformed Services Treatment Facilities program.

Section 8080 has been amended that requires the Director of the Air National Guard to operate a Command, Control, Communications and Intelligence planning office.

Section 8081 has been amended that prohibits funds for construction of a Pentagon Maintenance Facility, a Logistics Support Extension, or any other building not a part of the present Pentagon building.

Section 8083 has been amended that prohibits funds for construction of GWEN communications sites in the United States.

Section 8084 has been added to extend the availability of funds for claims resulting from the eruption of Mount Pinatubo in the Philippines.

Section 8085 has been added to transfer funds from "Operation and Maintenance, Defense-wide" to other accounts to pay civilian voluntary separation incentives.

Section 8086 has been added to extend the availability of funds in the Defense Overseas Military Facility Investment Recovery Account.

Section 8087 has been added that provides that retired pay of personnel retiring under the temporary early retirement authority be paid from the active military personnel accounts.

Section 8088 has been added that prohibits the relocation of the 116th Fighter Wing of the Air National Guard or to convert that wing from F–15A aircraft to B–1B aircraft.

Section 8089 has been added that allows the exchange of real estate property in Texas.

Section 8090 has been added which prohibits funds to procure aircraft fuel cells unless they are produced or manufactured in the United States by a domestic-owned domestic-operated entity.

Section 8091 has been added to allow the Department of Defense to conduct an ROTC demonstration project at the University of Indiana-Northwest.

Section 8092 has been added allowing the Department of Defense to purchase an investment item up to $50,000 with operation and maintenance funds.

Section 8093 has been added that prohibits funds for support of the Safeguard C contingent nuclear testing program.

Section 8094 has been added that allows the Department to consider qualified bids from any eligible country under the Caribbean Basin Economic Recovery Act.

Section 8096 has been added which places restrictions on the number and compensation for Senior Executive Service positions within the Office of the Assistant Secretary of the Army for Civil Works.

Section 8097 has been added that prohibits use of the DBOF for procurement of items traditionally funded in the procurement appropriations.

Section 8098 has been added that enables procurement of OH–58D AHIP and AH–64 Apache helicopters.

Section 8099 has been added requiring that a warning label be included with any purchase of cement product.

Section 8100 has been added that directs DoD to seek compensation for personnel killed and wounded by aircraft of the military forces of Peru.

Section 8101 has been added that directs DoD to use available off the shelf items in filling small craft and small boat requirements.

Section 8103 has been amended to change the percentage of personnel which are assigned to the National Foreign Intelligence Programs.

Section 8109 has been added to incorporate the classified Annex into the Appropriations act.

Section 8110 has been added to provide funds to the Defense Intelligence Agency for intelligence communications and information systems at the Unified and Specified Commands.

Section 8111 has been added prohibiting funds for any National Foreign Intelligence Program unless budget exhibits are submitted to the Committee for fiscal year 1995 justifying requested funds.

Section 8112 has been added that prohibits funds for the movement of any function of the Defense Mapping Agency Aerospace Center annex from St. Louis, Missouri.

Section 8113 has been added that clarifies language pertaining to curios and relics being transferred from foreign governments.

Section 8114 has been added to provide a 2.2% pay raise to Coast Guard uniformed personnel.

Section 8115 has been added to ensure that the Department follows depot maintenance competition rules under Title 10 U.S.C.

Section 8116 has been added that directs the Department to proceed with implementation concerning the consolidation of tactical missile maintenance at Letterkenny Army Depot.

Section 8117 has been added to require that funds appropriated for the USH-42 Mission Recorder program for the A-6 aircraft be obligated.

Section 8118 has been added that earmarks funds for settlement of claims at the Marine Corps Air Ground Combat Center in California.

Section 8119 has been added to prohibit a sole source contract for ring laser gyroscope inertial navigation systems.

Section 8120 has been added to ensure that no funds are spent on any non-Base Realignment and Closure actions which would delay the relocation of Navy mine countermeasure ships to Ingleside, Texas.

Section 8121 has been added which places an outlay ceiling on appropriations for the Department of Defense for fiscal year 1994.

Section 8122 has been amended to provide transfer of funds to cover cost increases on various shipbuilding programs.

Section 8123 has been added mandating that intelligence requirements boards be composed of intelligence consumers.

Section 8124 requires the obligation of funds appropriated in fiscal year 1993 for the Space Nuclear Thermal Propulsion Program.

The Committee continues to believe there is enormous potential for technological breakthroughs in space nuclear propulsion and power development and directs the Departments of Defense and Air Force to obligate and expend the funds appropriated for the Space Nuclear Thermal Propulsion (SNTP) program in fiscal year 1993 only for continuing this technology development. The Committee directs that the current program, using funds already appropriated, be changed or scaled to continue a program involving the U.S. industrial base that demonstrates and develops key nuclear technologies as well as preform top level mission analysis for space nuclear propulsion and power for both military and civilian space programs and applications. The Committee firmly believes that the domestic space nuclear propulsion and power system technologies funded thus far can provide great potential for enhanced capability in reallocation of military space assets, future manned and unmanned planetary exploration, next generation telecommunications satellites, reduced launch costs and substantial increases in lift for both military and civilian programs. The Department should continue cost reduction initiatives already begun in this program, in-

cluding the incorporation of Russian technology. The Committee directs the Department to establish an inter-agency and departmental task force to develop cooperative arrangements between other services and agencies within DoD, the Department of Energy, and NASA for potential joint sponsorship and technology development. The Committee also directs that the fiscal year 1993 funding and future funding for all these efforts be in the 6.2 category under the sponsorship of the Air Force or the Secretary of Defense.

Section 8125 has been added addressing Arms Control Research.

The Committee has noted the proliferation of arms control verification, monitoring, and implementation research and development programs by various agencies, not only within the Defense Department, but also in the intelligence community and other federal departments and agencies. Unfortunately, reports delivered to the Congress this year in nuclear nonproliferation and chemical and biological weapons research did not provide essential information about overall and annual project budgets, schedules, priorities, or relationships to other projects. Given the greatly increased spending, this area deserves much more high-level attention. The Committee, therefore, has included a general provision directing the Secretary of Defense and the Director of Central Intelligence to submit a joint report with recommendations for improved management of arms control research and development programs, to be delivered to the Congress with the fiscal year 1995 budget.

Section 8126 has been added that places restrictions on funds for the purchase of a totally enclosed lifeboat survival system.

Section 8127 has been added that prohibits the transfer of a facility in the United States or to renovate a facility for use as a United Nations peacekeeping facility.

COMPLIANCE WITH RULE XIII—CLAUSE 3

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

In the general provisions (section 8005) of the bill, section 9005 of the Department of Defense Appropriations Act, 1993 (Public Law 102–396), is amended, as follows:

> SEC. 9005. During the current fiscal year and hereafter, no part of any appropriation [contained in this Act] *or any other funds available to the Department of Defense*, except for small purchases covered by section 2304(g) of title 10, United States Code, shall be available for the procurement of any article or item of food, clothing, tents, tarpaulins, covers, cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials, or specialty metals including stainless steel flatware, or hand or

measuring tools, not grown, reprocessed, reused, or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that satisfactory quality and sufficient quantity of any articles or items of food, individual equipment, tents, tarpaulins, covers, or clothing or any form of cotton or other natural fiber products, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, wool, or specialty metals including stainless steel flatware, grown, reprocessed, reused, or produced in the United States or its possessions cannot be procured as and when needed at United States market prices and except procurements outside the United States in support of combat operations, procurements by vessels in foreign waters, and emergency procurements or procurements of perishable foods by establishments located outside the United States for the personnel attached thereto: *Provided*, That nothing herein shall preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States or its possessions when such procurement is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements or where such procurement is necessary in furtherance of agreements with foreign governments in which both governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, so long as such agreements with foreign governments comply, where applicable, with the requirements of section 36 of the Arms Export Control Act and with section 2457 of title 10, United States Code: *Provided further*, That nothing herein shall preclude the procurement of foods manufactured or processed in the United States or its possessions.

TRANSFER OF FUNDS

Pursuant to clause 1(b), rule X of the House of Representatives, the following is submitted describing the transfer of funds provided in the accompanying bill.

The following table shows the appropriations affected by the transfers:

Appropriations to which transfer is made	Amount	Appropriations from which transfer is made	Amount
Operation and maintenance, Army	$880,200,000	Defense Business Operations Fund	$3,035,300,000
Operation and maintenance, Navy	1,092,700,000		
Operation and maintenance, Marine Corps.	121,000,000		
Operation and maintenance, Air Force	941,400,000		
Operation and maintenance, Army	150,000,000	National Defense Stockpile Transaction Fund.	500,000,000
Operation and maintenance, Navy	150,000,000		

Appropriations to which transfer is made	Amount	Appropriations from which transfer is made	Amount
Operation and maintenance, Air Force	200,000,000		
Procurement of ammunition, Army	100,000,000	Conventional ammunition working capital fund.	100,000,000

Environmental Restoration, Defense contains language which provides for the transfer out of and into this account.

Language has been included in "Support for International Sporting Competitions, Defense" which transfers prior year funds to this activity.

Language has been included in "Global Cooperative Initiatives, Defense-wide" to transfer funds to other DoD appropriations.

Language has been included in "National Defense Sealift Fund" which allows transfer of $200,000,000 to the Secretary of Transportation for loan guarantees.

Drug Interdiction and Counter-Drug Activities, Defense contains language which provides for the transfer of funds to other appropriation accounts of the Department of Defense.

Five other provisions (section 8006, 8007, 8030, 8074, and 8108) contain language which allows transfer of funds between accounts.

Section 8085 contains language which transfers $100,000,000 from Operation and Maintenance, Defense-Wide to other appropriation accounts for payment of civilian voluntary separation incentives.

Section 8114 contains lanugage which transfers $21,700,000 to the Coast Guard.

Section 8122 contains language which transfers funds as follows:

Appropriations to which transfer is made:	Amount
Shipbuilding and Conversion, Navy 1986/1990	$3,459,000
Shipbuilding and Conversion, Navy 1986/1992	113,454,000
Shipbuilding and Conversion, Navy 1989/1993	160,356,000
Shipbuilding and Conversion, Navy 1990/1994	113,361,000
Shipbuilding and Conversion, Navy 1991/1995	101,954,000
Shipbuilding and Conversion, Navy 1993/1997	24,500,000
Total	517,084,000
Appropriations from which transfer is made:	
Aircraft Procurement, Navy 1992/1994	57,600,000
Aircraft Procurement, Navy 1993/1995	3,400,000
Shipbuilding and Conversion, Navy 1990/1994	5,037,000
Shipbuilding and Conversion, Navy 1991/1995	3,806,000
Shipbuilding and Conversion, Navy 1992/1996	43,360,000
Shipbuilding and Conversion, Navy 1993/1997	51,902,000
Weapons Procurement, Navy 1992/1994	36,000,000
Weapons Procurement, Navy 1993/1995	100,179,000
Other Procurement, Navy 1993/1995	170,800,000
Research, Development, Test and Evaluation, Navy 1993/1995	45,000,000
Total	517,084,000

RESCISSIONS

Pursuant to clause (b) of rule X of the House of Representatives, the following table is submitted describing the rescissions recommended in the accompanying bill.

RESCISSIONS RECOMMENDED IN THE BILL

Department and activity	Amounts recommended for rescission
National Security Education Act Trust Funds	$150,000,000

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4), Rule XI of the House of Representatives, the following statement is made:

The bill reported will provide $240,144,539,000 in new budget obligational authority. This is a decrease of $936,992,000 below the budget request for fiscal year 1994 and $13,968,200,000 below the fiscal year 1993 funding level.

The appropriation as proposed by the Committee should not cause inflation to increase greatly. This level of Defense spending will have little inflationary effect in comparison to the forecasted size of the gross national product for 1994.

COMPARISON WITH BUDGET RESOLUTION

Section 308(a)(l)(A) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344), requires that the report accompanying a bill providing new budget authority contain a statement detailing how the authority compares with the reports submitted under section 602(b) of the Act for the most recently agreed to concurrent resolution on the budget for the fiscal year. This information follows:

[Dollars in millions]

	Sec. 602(b)			This bill—		
	Discretionary	Mandatory	Total	Discretionary	Mandatory	Total
Budget authority	$240,746	$180	$240,926	239,962	$182	240,144
Outlays	255,615	180	255,795	255,613	182	255,795

The bill provides no new spending authority as described in section 401(c)(2) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344), as amended.

FIVE-YEAR PROJECTION OF OUTLAYS

In compliance with section 308(a)(l)(C) of the Congressional Budget Act of 1974 (Public Law 93–344), as amended, the following table contains five-year projections associated with the budget authority provided in the accompanying bill.

[In millions of dollars]

Budget authority	$240,144
Outlays:	
Fiscal year 1994	161,588
Fiscal year 1995	46,938
Fiscal year 1996	18,591
Fiscal year 1997	7,780
Fiscal year 1996 and future years	7,450

FINANCIAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

In accordance with section 308(a)(1)(D) of the Congressional Budget Act of 1974 (Public Law 93–344), as amended, no new budget or outlays are provided by the accompanying bill for financial assistance to state and local governments.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1993 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1994

Agency and item (1)	Appropriated, 1993 (enacted to date) (2)	Budget estimates, 1994 (3)	Recommended in bill (4)	Bill compared with appropriated, 1993 (5)	Bill compared with budget estimates, 1994 (6)
TITLE I					
MILITARY PERSONNEL					
Military Personnel, Army	23,238,457,000	21,206,600,000	21,571,207,000	-1,667,250,000	+364,607,000
Military Personnel, Navy	19,228,564,000	18,356,900,000	18,633,383,000	-595,181,000	+276,483,000
Military Personnel, Marine Corps	5,980,998,000	5,678,700,000	5,763,117,000	-217,881,000	+84,417,000
Military Personnel, Air Force	18,522,963,000	15,629,630,000	15,916,937,000	-2,606,026,000	+287,307,000
Reserve Personnel, Army	2,170,496,000	2,114,400,000	2,143,272,000	-27,224,000	+28,872,000
Reserve Personnel, Navy	1,653,200,000	1,528,700,000	1,565,838,000	-87,362,000	+37,138,000
Reserve Personnel, Marine Corps	345,526,000	308,000,000	350,490,000	+4,964,000	+42,490,000
Reserve Personnel, Air Force	729,019,000	772,748,000	783,158,000	+54,139,000	+10,410,000
National Guard Personnel, Army	3,239,702,000	3,290,200,000	3,334,183,000	+94,481,000	+43,983,000
National Guard Personnel, Air Force	1,166,100,000	1,197,892,000	1,215,935,000	+49,835,000	+18,043,000
Total, title I, Military Personnel	76,275,025,000	70,083,770,000	71,277,520,000	-4,997,505,000	+1,193,750,000
TITLE II					
OPERATION AND MAINTENANCE					
Operation and Maintenance, Army 4/	13,442,418,000	14,966,194,000	15,221,091,000	+1,778,673,000	+254,897,000
(By transfer - DBOF)	(2,229,000,000)	(880,200,000)	(880,200,000)	(-1,348,800,000)	....
(By transfer - National Defense Stockpile Transaction Fund)	....	(150,000,000)	(150,000,000)	(+150,000,000)	....

Operation and Maintenance, Navy 4/	19,108,558,000	18,139,200,000	18,097,782,000	-1,010,776,000	-41,418,000
(By transfer - DBOF)	(94,500,000)	(1,092,700,000)	(1,092,700,000)	(+998,200,000)	....
(By transfer - National Defense Stockpile Transaction Fund)	....	(150,000,000)	(150,000,000)	(+150,000,000)	....
Operation and Maintenance, Marine Corps	1,383,138,000	1,697,000,000	1,773,889,000	+390,751,000	+76,889,000
(By transfer - DBOF)	(58,500,000)	(121,000,000)	(121,000,000)	(+62,500,000)	....
Operation and Maintenance, Air Force 4/	16,009,040,000	18,582,984,000	18,305,447,000	+2,296,407,000	-277,537,000
(By transfer - DBOF)	(672,000,000)	(941,400,000)	(941,400,000)	(+269,400,000)	....
(By transfer - National Defense Stockpile Transaction Fund)	....	(200,000,000)	(200,000,000)	(+200,000,000)	....
Operation and Maintenance, Defense-Wide 1/, 4/	8,778,004,000	9,500,581,000	9,497,133,000	+719,129,000	-3,448,000
Operation and Maintenance, Army Reserve	1,038,525,000	1,107,800,000	1,115,095,000	+76,570,000	+7,295,000
Operation and Maintenance, Navy Reserve	850,745,000	773,800,000	807,200,000	-43,545,000	+33,400,000
Operation and Maintenance, Marine Corps Reserve	77,870,000	75,100,000	86,855,000	+8,985,000	+11,755,000
Operation and Maintenance, Air Force Reserve	1,195,024,000	1,354,578,000	1,370,222,000	+175,198,000	+15,644,000
Operation and Maintenance, Army National Guard	2,255,623,000	2,218,900,000	2,272,018,000	+16,395,000	+53,118,000
Operation and Maintenance, Air National Guard	2,493,689,000	2,657,233,000	2,695,233,000	+201,544,000	+38,000,000
National Board for the Promotion of Rifle Practice, Army	2,700,000	2,483,000	2,483,000	-217,000	....
Court of Military Appeals, Defense	5,900,000	6,055,000	5,855,000	-45,000	-200,000
Environmental Restoration, Defense	1,199,700,000	2,309,400,000	1,716,800,000	+517,100,000	-592,600,000
Support for Intl. Sporting Competitions, Defense	....	....	6,000,000	+6,000,000	+6,000,000
Summer Olympics	2,000,000	....	....	-2,000,000	....
World Cup USA 1994	9,000,000	....	....	-9,000,000	....
World University Games	6,000,000	....	....	-6,000,000	....
Real Property Maintenance, Defense	1,520,029,000	....	....	-1,520,029,000	....
(By transfer)	(400,000,000)	....	....	(-400,000,000)	....

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1993 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1994—Continued

Agency and item (1)	Appropriated, 1993 (enacted to date) (2)	Budget estimates, 1994 (3)	Recommended in bill (4)	Bill compared with appropriated, 1993 (5)	Bill compared with budget estimates, 1994 (6)
Humanitarian Assistance	28,000,000	....	15,000,000	-13,000,000	+15,000,000
Global cooperative initiatives	....	448,000,000	383,000,000	+383,000,000	-65,000,000
Former Soviet Union threat reduction	....	400,000,000	400,000,000	+400,000,000	....
Total, title II, Operation and maintenance	69,405,963,000	74,239,308,000	73,771,103,000	+4,365,140,000	-468,205,000
(By transfer)	(3,454,000,000)	(3,535,300,000)	(3,535,300,000)	(+81,300,000)	....
TITLE III					
PROCUREMENT					
Aircraft Procurement, Army	1,441,842,000	1,110,436,000	1,726,164,000	+284,322,000	+615,728,000
Missile Procurement, Army	1,051,667,000	1,043,550,000	1,126,110,000	+74,443,000	+82,560,000
Procurement of Weapons and Tracked Combat Vehicles, Army	921,389,000	874,346,000	892,709,000	-28,680,000	+18,363,000
Procurement of Ammunition, Army	1,094,260,000	734,427,000	620,787,000	-473,473,000	-113,640,000
(By Transfer - CAWCF)	....	....	(100,000,000)	(+100,000,000)	(+100,000,000)
Other Procurement, Army	3,047,053,000	3,051,281,000	2,904,933,000	-142,120,000	-146,348,000
Aircraft Procurement, Navy	6,026,213,000	6,132,604,000	5,664,216,000	-361,997,000	-468,388,000
Weapons Procurement, Navy	3,760,697,000	3,040,260,000	2,808,986,000	-951,711,000	-231,274,000
Shipbuilding and Conversion, Navy	5,978,287,000	4,294,742,000	5,397,102,000	-581,185,000	+1,102,360,000
(Transfer out to Sealift Fund)	(-1,875,100,000)	....	....	(+1,875,100,000)	....
Other Procurement, Navy	5,615,325,000	2,967,974,000	2,980,815,000	-2,634,510,000	+12,841,000
Procurement, Marine Corps	824,607,000	483,464,000	527,754,000	-296,853,000	+44,290,000

Aircraft Procurement, Air Force	10,029,285,000	7,300,965,000	6,887,201,000	-3,142,084,000	-413,764,000
Missile Procurement, Air Force	4,369,524,000	4,361,050,000	3,845,354,000	-524,170,000	-515,696,000
Other Procurement, Air Force	7,686,524,000	7,942,065,000	7,336,918,000	-349,606,000	-605,147,000
Procurement, Defense-Wide	1,962,058,000	1,730,164,000	1,557,344,000	-404,714,000	-172,820,000
National Guard and Reserve Equipment	1,567,200,000		1,178,100,000	-389,100,000	+1,178,100,000
Defense Production Act Purchases			200,000,000	+200,000,000	+200,000,000
Total, title III, Procurement	55,375,931,000	45,067,328,000	45,654,493,000	-9,721,438,000	+587,165,000
TITLE IV					
RESEARCH, DEVELOPMENT, TEST AND EVALUATION					
Research, Development, Test and Evaluation, Army	6,032,860,000	5,249,948,000	5,560,082,000	-472,778,000	+310,134,000
Research, Development, Test and Evaluation, Navy	8,930,381,000	9,215,604,000	8,604,777,000	-325,604,000	-610,827,000
Research, Development, Test and Evaluation, Air Force	13,199,006,000	13,694,984,000	12,608,995,000	-590,011,000	-1,085,989,000
Research, Development, Test and Evaluation, Defense-Wide 2/	9,799,911,000	10,174,549,000	9,526,918,000	-272,993,000	-647,631,000
Developmental Test and Evaluation, Defense	259,707,000	272,592,000	232,592,000	-27,115,000	-40,000,000
Operational Test and Evaluation, Defense	12,983,000	12,650,000	12,650,000	-333,000	
Total, title IV, Research, Development, Test and Evaluation	38,234,848,000	38,620,327,000	36,546,014,000	-1,688,834,000	-2,074,313,000
TITLE V					
REVOLVING AND MANAGEMENT FUNDS					
Defense business operations fund	1,123,800,000	1,161,095,000	1,091,100,000	-32,700,000	-69,995,000
(Transfer out - DBOF)	(-3,054,000,000)	(-3,035,300,000)	(-3,035,300,000)	(+18,700,000)	

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1993 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1994—Continued

Agency and item (1)	Appropriated, 1993 (enacted to date) (2)	Budget estimates, 1994 (3)	Recommended in bill (4)	Bill compared with appropriated, 1993 (5)	Bill compared with budget estimates, 1994 (6)
National Defense Sealift Fund	613,400,000	290,800,000	490,800,000	-122,600,000	+200,000,000
(By transfer)	(1,875,100,000)			(-1,875,100,000)	
National Defense Strategic Lift Fund					
National Shipbuilding Initiative					
National Defense Stockpile Transaction Fund.(transfer)	(-400,000,000)			(+400,000,000)	
Total, title V, Revolving and Management Funds	1,737,200,000	1,451,895,000	1,581,900,000	-155,300,000	+130,005,000
TITLE VI					
OTHER DEPARTMENT OF DEFENSE PROGRAMS					
Defense health program:					
Operation and maintenance	8,948,800,000	9,080,538,000	9,368,185,000	+419,385,000	+287,647,000
Procurement	293,772,000	272,762,000	276,262,000	-17,510,000	+3,500,000
Research, development, test, and evaluation					
Total, Defense Health Program	9,242,572,000	9,353,300,000	9,644,447,000	+401,875,000	+291,147,000
Chemical Agents and Munitions Destruction, Army: 3/...					
Operation and maintenance	267,400,000	308,161,000	292,061,000	+24,661,000	-16,100,000
Procurement	244,700,000	125,486,000	74,800,000	-169,900,000	-50,686,000
Research, development, test, and evaluation	6,500,000		30,700,000	+24,200,000	+30,700,000
Total, Chemical Agents	518,600,000	433,647,000	397,561,000	-121,039,000	-36,086,000

Drug Interdiction Defense	1,140,651,000	1,168,200,000	757,785,000	-382,866,000	-410,415,000
Office of the Inspector General	126,000,000	127,601,000	169,801,000	+43,801,000	+42,200,000
Total, title VI, Other Department of Defense Programs	11,027,823,000	11,082,748,000	10,969,594,000	-58,229,000	-113,154,000
TITLE VII					
RELATED AGENCIES					
Central Intelligence Agency Retirement and Disability System Fund	168,900,000	182,300,000	182,300,000	+13,400,000	
Community Management Staff	77,700,000	105,788,000	114,688,000	+36,988,000	+8,900,000
National Security Education Trust Fund		24,000,000			-24,000,000
Rescission, FY 1992			-140,000,000	-140,000,000	-140,000,000
Rescission, FY 1993			-10,000,000	-10,000,000	-10,000,000
Total, title VII, Related Agencies	246,600,000	312,088,000	146,988,000	-99,612,000	-165,100,000
TITLE VIII					
Economic Conversion:					
Defense Reinvestment for Economic Growth	472,000,000			-472,000,000	
Total, Economic Conversion	472,000,000			-472,000,000	
GENERAL PROVISIONS					
(Additional transfer authority, sec. 8006)	(1,500,000,000)	(2,000,000,000)	(2,000,000,000)	(+500,000,000)	
Residual value negotiations (sec. 9047A)	125,000,000			-125,000,000	
Disaster Relief (Payment of Claims, Philippines)	70,000,000			-70,000,000	
Consultant Services (sec. 9090 c)	-300,000,000			+300,000,000	
Use of NATO reimbursements (sec. 9109)	56,800,000			-56,800,000	

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1993 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1994—Continued

Agency and item (1)	Appropriated, 1993 (enacted to date) (2)	Budget estimates, 1994 (3)	Recommended in bill (4)	Bill compared with appropriated, 1993 (5)	Bill compared with budget estimates, 1994 (6)
Strategic Petroleum Reserves (sec. 9149) (domestic)	125,625,000			-125,625,000	
Payment of claims, Eielson AFB (sec. 9160)	500,000			-500,000	
United States Coast Guard (sec. 9166)	303,000,000			-303,000,000	
Coast Guard			21,700,000	+21,700,000	+21,700,000
Total, General Provisions	380,925,000		21,700,000	-359,225,000	+21,700,000
Total, title VIII, Economic Conversion and GPs	852,925,000		21,700,000	-831,225,000	+21,700,000
GRAND BILL TOTAL	253,156,315,000	240,857,464,000	239,969,312,000	-13,187,003,000	-888,152,000
Total, Department of Defense:					
Bill total	253,156,315,000	240,857,464,000	239,969,312,000	-13,187,003,000	-888,152,000
Scorekeeping adjustments	956,424,000	224,067,000	175,227,000	-781,197,000	-48,840,000
Grand total	254,112,739,000	241,081,531,000	240,144,539,000	-13,968,200,000	-936,992,000

1/ FY 1994 request includes $71,000,000 for Investment Appropriations Initiatives that were included in the budget.

2/ FY 1994 request includes $260,000,000 for Investment Appropriations Initiatives that were included in the budget.

3/ Included in budget under Procurement title.

4/ A total of $1,000,000,000 was transferred from O&M to MilCon for BRAC III costs.

5/ Includes the FY 1993 enacted Supplemental for Somalia (P.L. 103-50).

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1993 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1994

Agency and item (1)	Appropriated, 1993 (enacted to date) (2)	Budget estimates, 1994 (3)	Recommended in bill (4)	Bill compared with appropriated, 1993 (5)	Bill compared with budget estimates, 1994 (6)
RECAPITULATION					
Title I - Military Personnel	76,275,025,000	70,083,770,000	71,277,520,000	-4,997,505,000	+1,193,750,000
Title II - Operation and Maintenance	69,405,963,000	74,239,308,000	73,771,103,000	+4,365,140,000	-468,205,000
Title III - Procurement	55,375,931,000	45,067,328,000	45,654,493,000	-9,721,438,000	+587,165,000
Title IV - Research, Development, Test and Evaluation	38,234,848,000	38,620,327,000	36,546,014,000	-1,688,834,000	-2,074,313,000
Title V - Revolving and Management Funds	1,737,200,000	1,451,895,000	1,581,900,000	-155,300,000	+130,005,000
Title VI - Other Department of Defense Programs	11,027,823,000	11,082,748,000	10,969,594,000	-58,229,000	-113,154,000
Title VII - Related agencies	246,600,000	312,088,000	146,988,000	-99,612,000	-165,100,000
Title VIII - Economic Conversion	472,000,000			-472,000,000	
General provisions	380,925,000		21,700,000	-359,225,000	+21,700,000
(Additional transfer authority)	(1,500,000,000)	(2,000,000,000)	(2,000,000,000)	(+500,000,000)	
Total, Department of Defense	253,156,315,000	240,857,464,000	239,969,312,000	-13,187,003,000	-888,152,000
Scorekeeping adjustments	956,424,000	224,067,000	175,227,000	-781,197,000	-48,840,000
Grand total	254,112,739,000	241,081,531,000	240,144,539,000	-13,968,200,000	-936,992,000

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–255

GOVERNMENT SECURITIES REFORM ACT OF 1993

SEPTEMBER 23, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

[To accompany H.R. 618]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 618) to extend and revise rulemaking authority with respect to Government securities under the Federal securities laws, and for other purposes, having considerod the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

69–006

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Government Securities Reform Act of 1993".

SEC. 2. EXTENSION OF GOVERNMENT SECURITIES RULEMAKING AUTHORITY.

Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) is amended by striking subsection (g).

SEC. 3. TRANSACTION RECORDS.

(a) AMENDMENT.—Section 15C(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(d)) is amended by adding at the end thereof the following new paragraph:

"(3) GOVERNMENT SECURITIES TRADE RECONSTRUCTION.—

"(A) FURNISHING RECORDS.—Every government securities broker and government securities dealer shall furnish to the Commission on request such records of government securities transactions, including records of the date and time of execution of trades, as the Commission may require to reconstruct trading in the course of a particular inquiry or investigation being conducted by the Commission. In requiring information pursuant to this paragraph, the Commission shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission, to the Federal Reserve Bank of New York, or to an appropriate regulatory agency or self-regulatory organization with responsibility for examining the government securities broker or government securities dealer. The Commission may require that such information be furnished in machine readable form notwithstanding any limitation in subparagraph (B).

"(B) LIMITATION; CONSTRUCTION.—The Commission shall not utilize its authority under this paragraph to develop regular reporting requirements, except that the Commission may require information to be furnished under this paragraph as frequently as necessary for particular inquiries or investigations. This paragraph shall not be construed as requiring, or as authorizing the Commission to require, any government securities broker or government securities dealer to obtain or maintain any information for purposes of this paragraph which is not otherwise maintained by such broker or dealer in accordance with any other provision of law or usual and customary business practice. The Commission shall, where feasible, avoid requiring any information to be furnished under this paragraph that the Commission may obtain from the Federal Reserve Bank of New York.

"(C) PROCEDURES FOR REQUIRING INFORMATION.—At the time the Commission requests any information pursuant to subparagraph (A) with respect to any government securities broker or government securities dealer for which the Commission is not the appropriate regulatory agency, the Commission shall notify the appropriate regulatory agency for such government securities broker or government securities dealer and, upon request, furnish to the appropriate regulatory agency any information supplied to the Commission.

"(D) CONSULTATION.—Within 90 days after the date of the enactment of this paragraph, and annually thereafter, or upon the request of any other appro-

priate regulatory agency, the Commission shall consult with the other appropriate regulatory agencies to determine the availability of records that may be required to be furnished under this paragraph and, for those records available directly from the other appropriate regulatory agencies, to develop a procedure for furnishing such records expeditiously upon the Commission's request.

"(E) EXCLUSION FOR EXAMINATION REPORTS.—Nothing in this paragraph shall be construed so as to permit the Commission to require any government securities broker or government securities dealer to obtain, maintain, or furnish any examination report of any appropriate regulatory agency other than the Commission or any supervisory recommendations or analysis contained in any such examination report.

"(F) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission and the appropriate regulatory agencies shall not be compelled to disclose any information required or obtained under this paragraph. Nothing in this paragraph shall authorize the Commission or any appropriate regulatory agency to withhold information from Congress, or prevent the Commission or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or from complying with an order of a court of the United States in an action brought by the United States, the Commission, or the appropriate regulatory agency. For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.".

(b) CONFORMING AMENDMENTS.—(1) Section 15C(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(a)(4)) is amended by inserting ", other than subsection (d)(3)," after "subsection (a), (b), or (d) of this section".

(2) Section 15C(f)(2) of such Act is amended—

(A) in the first sentence, by inserting ", other than subsection (d)(3)", after "threatened violation of the provisions of this section"; and

(B) in the second sentence, by inserting "(except subsection (d)(3))" after "other than this section".

SEC. 4. LARGE POSITION REPORTING.

Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) is amended—

(1) by redesignating subsection (f) as subsection (h); and

(2) by inserting after subsection (e) the following new subsection:

"(f) LARGE POSITION REPORTING.—

"(1) REPORTING REQUIREMENTS.—The Secretary may adopt rules to require specified persons holding, maintaining, or controlling large positions in to-be-issued or recently issued Treasury securities to file such reports regarding such positions as the Secretary determines to be necessary or appropriate for the purpose of monitoring the impact in the Treasury securities market of concentrations of positions in Treasury securities and for the purpose of otherwise assisting the Commission in the enforcement of this title. Reports required under this subsection shall be filed with the Federal Reserve Bank of New York, acting as agent for the Secretary, and shall be provided by that Federal Reserve Bank to the Commission on a timely basis.

"(2) RECORDKEEPING REQUIREMENTS.—Rules under this subsection may require persons holding, maintaining, or controlling large positions in Treasury securities to make and keep for prescribed periods such records as the Secretary determines are necessary or appropriate to ensure that such persons can comply with reporting requirements under this subsection.

"(3) AGGREGATION RULES.—Rules under this subsection—

"(A) may prescribe the manner in which positions and accounts shall be aggregated for the purpose of this subsection, including aggregation on the basis of common ownership or control; and

"(B) may define which persons (individually or as a group) hold, maintain, or control large positions.

"(4) DEFINITIONAL AUTHORITY; DETERMINATION OF REPORTING THRESHOLD.—

"(A) In prescribing rules under this subsection, the Secretary may, consistent with the purpose of this subsection, define terms used in this subsection that are not otherwise defined in section 3 of this title.

"(B) Rules under this subsection shall specify—

"(i) the minimum size of positions subject to reporting under this subsection, taking into account the purposes of this subsection and the po-

tential for price distortions or other anomalies resulting from large positions;

"(ii) the types of positions (which may include financing arrangements) to be reported;

"(iii) the securities to be covered; and

"(iv) the form and manner in which reports shall be transmitted, which may include transmission in machine readable form.

"(5) LIMITATION ON DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Secretary and the Commission shall not be compelled to disclose any information required to be kept or reported under this subsection. Nothing in this subsection shall authorize the Secretary or the Commission to withhold information from Congress, or prevent the Secretary or the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or from complying with an order of a court of the United States in an action brought by the United States, the Secretary, or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.".

SEC. 5. AUTHORITY OF THE COMMISSION TO REGULATE TRANSACTIONS IN EXEMPTED SECURITIES.

(a) PREVENTION OF FRAUDULENT AND MANIPULATIVE ACTS AND PRACTICES.—Section 15(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(2)) is amended—

(1) by inserting "(A)" after "(2)";

(2) by striking "fictitious quotation, and no municipal securities dealer" and inserting the following:

"fictitious quotation.

"(B) No municipal securities dealer";

(3) by striking "fictitious quotation. The Commission shall" and inserting the following:

"fictitious quotation.

"(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security in connection with which such government securities broker or government securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

"(D) The Commission shall"; and

(4) by inserting at the end thereof the following:

"(E) The Commission shall, prior to adopting any rule or regulation under subparagraph (C), consult with and consider the views of the Secretary of the Treasury and each appropriate regulatory agency. If the Secretary of the Treasury or any appropriate regulatory agency comments in writing on a proposed rule or regulation of the Commission under such subparagraph (C) that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule.".

(b) FRAUDULENT AND MANIPULATIVE DEVICES AND CONTRIVANCES.—Section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(1)) is amended—

(1) by inserting "(A)" after "(c)(1)";

(2) by striking "contrivance, and no municipal securities dealer" and inserting the following:

"contrivance.

"(B) No municipal securities dealer";

(3) by striking "contrivance. The Commission shall" and inserting the following:

"contrivance.

"(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

"(D) The Commission shall"; and

(4) by inserting at the end thereof the following:

"(E) The Commission shall, prior to adopting any rule or regulation under subparagraph (C), consult with and consider the views of the Secretary of the Treasury and each appropriate regulatory agency. If the Secretary of the Treasury or any appropriate regulatory agency comments in writing on a proposed rule or regulation

of the Commission under such subparagraph (C) that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule.".

SEC. 6. BROKER/DEALER SUPERVISION RESPONSIBILITIES.

Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5) is amended by inserting after subsection (f) (as added by section 4 of this Act) the following new subsection:

"(g) POLICIES AND PROCEDURES TO PREVENT AND DETECT VIOLATIONS.—Every government securities broker and government securities dealer shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such person's business, to prevent and detect in connection with the purchase or sale of government securities, insofar as practicable, fraud and manipulation in violation of this title and the rules and regulations thereunder and violations of such other provisions of this title and the rules and regulations thereunder as the appropriate regulatory agency for such government securities broker or government securities dealer shall designate by rule.".

SEC. 7. SALES PRACTICE RULEMAKING AUTHORITY.

(a) RULES FOR FINANCIAL INSTITUTIONS.—Section 15C(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b)) is amended—

(1) by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (4), (5), (6), and (7), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) SALES PRACTICE RULES.—(A) With respect to any financial institution that has filed notice as a government securities broker or government securities dealer or that is required to file notice under subsection (a)(1)(B) of this section, the appropriate regulatory agency for such government securities broker or government securities dealer may issue such rules with respect to transactions in government securities as may be necessary to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

"(B) Each appropriate regulatory agency shall consult with the other appropriate regulatory agencies for the purpose of ensuring the consistency of the rules prescribed by such agencies under this paragraph. The appropriate regulatory agencies shall consult with and consider the views of the Secretary and the Commission with respect to the impact of such rules on the operations of the market for government securities, consistency with analogous rules of self-regulatory organizations, and the enforcement and administration of such rules. The consultation required by this paragraph shall be conducted prior to the appropriate regulatory agency adopting a rule under this paragraph, unless the appropriate regulatory agency determines that an emergency exists requiring expeditious and summary action and publishes its reasons therefor. If the Secretary or the Commission comments in writing to the appropriate regulatory agency on a proposed rule that has been published for comment, the appropriato regulatory agency shall respond in writing to such written comment before adopting the rule.".

(b) RULES BY REGISTERED SECURITIES ASSOCIATIONS.—

(1) REMOVAL OF LIMITATIONS ON AUTHORITY.—(A) Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended—

(i) by striking subsections (f)(1) and (f)(2); and

(ii) by redesignating subsection (f)(3) as subsection (f).

(B) Section 15A(g) of such Act is amended—

(i) by striking "exempted securities" in paragraph (3)(D) and inserting "municipal securities";

(ii) by striking paragraph (4); and

(iii) by redesignating paragraph (5) as paragraph (4).

(2) OVERSIGHT OF REGISTERED SECURITIES ASSOCIATIONS.—Section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) is amended—

(A) in subsection (b), by adding at the end thereof the following new paragraph:

"(5) The Commission shall consult with and consider the views of the Secretary of the Treasury prior to approving a proposed rule change filed by a registered securities association that primarily concerns conduct related to transactions in government securities, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor. If the Secretary comments in writing to the Commission on such proposed rule change that has been published for comment, the Commission shall respond in writing to such written comment before approving the proposed rule change.";

(B) in subsection (c), by adding at the end thereof the following new paragraph:

"(5) Before adopting a rule to amend a rule of a registered securities association that primarily concerns conduct related to transactions in government securities, the Commission shall consult with and consider the views of the Secretary, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor. If the Secretary comments in writing to the Commission on such proposed rule change that has been published for comment, the Commission shall respond in writing to such written comment before approving the proposed rule change.".

(3) CONFORMING AMENDMENT.—

(A) Section 3(a)(12)(B)(ii) of such Act (15 U.S.C. 78b(a)(12)(B)(ii)) is amended by striking "15, 15A (other than subsection (g)(3)), and 17A" and inserting "15 and 17A".

(B) Section 15(b)(7) of such Act (15 U.S.C. 78o(b)(7)) is amended by inserting "or government securities broker or government securities dealer registered (or required to register) under section 15C(a)(1)(A)" after "No registered broker or dealer".

SEC. 8. MARKET INFORMATION.

Section 23(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78w) is amended—

(1) by striking subparagraphs (C), (D), and (H);

(2) by redesignating subparagraphs (E), (F), and (G) as subparagraphs (C), (D), and (E), respectively;

(3) by redesignating subparagraphs (I), (J), and (K) as subparagraphs (F), (G), and (H), respectively;

(4) by striking "and" at the end of such redesignated subparagraph (G);

(5) by striking the period at the end of such redesignated subparagraph (H) and inserting "; and"; and

(6) by inserting after such redesignated subparagraph (H) the following new subparagraph:

"(I) the steps that have been taken and the progress that has been made in promoting the timely public dissemination and availability for analytical purposes (on a fair, reasonable, and nondiscriminatory basis) of information concerning government securities transactions and quotations, and its recommendations, if any, for legislation to assure timely dissemination of (i) information on transactions in regularly traded government securities sufficient to permit the determination of the prevailing market price for such securities, and (ii) reports of the highest published bids and lowest published offers for government securities (including the size at which persons are willing to trade with respect to such bids and offers).".

SEC. 9. STUDY OF REGULATORY SYSTEM FOR GOVERNMENT SECURITIES.

(a) JOINT STUDY.—The Secretary of the Treasury, the Securities and Exchange Commission, and the Board of Governors of the Federal Reserve System shall—

(1) evaluate the effectiveness of any rules promulgated or amended after October 1, 1991, pursuant to section 15C of the Securities Exchange Act of 1934 or any amendment made by this title, and any national securities association rule changes applicable principally to government securities transactions approved after October 1, 1991, in carrying out the purposes of such Act;

(2) evaluate the effectiveness of surveillance and enforcement with respect to government securities, and the impact on such surveillance and enforcement of defects in any available audit trails with respect to transactions in such securities; and

(3) submit to the Congress, not later than March 31, 1998, any recommendations they may consider appropriate concerning—

(A) the regulation of government securities brokers and government securities dealers,

(B) the dissemination of information concerning quotations for and transactions in government securities,

(C) the prevention of sales practice abuses in connection with transactions in government securities, and

(D) such other matters as they consider appropriate.

(b) GAO STUDY.—The Comptroller General shall—

(1) conduct a study of the effectiveness of regulation of government securities brokers and government securities dealers pursuant to section 15C of the Securities Exchange Act of 1934 and the effectiveness of the amendments made by this title; and

(2) submit to the Congress, not later than March 31, 1997, the Comptroller General's recommendations for change, if any, or such other recommendations as the Comptroller General considers appropriate.

(c) TREASURY STUDY.—The Secretary of the Treasury, in consultation with the Securities and Exchange Commission, shall—

(1) conduct a study of—

(A) the identity and nature of the business of government securities brokers and government securities dealers that are registered with the Securities and Exchange Commission under section 15C of the Securities Exchange Act of 1934; and

(B) the continuing need for, and regulatory and financial consequences of, a separate regulatory system for such government securities brokers and government securities dealers; and

(2) submit to the Congress, not later than 18 months after the date of enactment of this Act, the Secretary's recommendations for change, if any, or such other recommendations as the Secretary considers appropriate.

SEC. 10. TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (34)(G) (relating to the definition of appropriate regulatory agency), by amending clauses (ii), (iii), and (iv) to read as follows:

"(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, an uninsured State branch or State agency of a foreign bank, a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978), or a corporation organized or having an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 or section 25A of the Federal Reserve Act;

"(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank) or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978);

"(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation;";

(2) by amending paragraph (46) (relating to the definition of financial institution) to read as follows:

"(46) The term 'financial institution' means—

"(A) a bank (as defined in paragraph (6) of this subsection);

"(B) a foreign bank (as such term is used in the International Banking Act of 1978); and

"(C) a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation."; and

(3) by redesignating paragraph (51) (as added by section 204 of the International Securities Enforcement Cooperation Act of 1990) as paragraph (52).

(b) EFFECTIVE DATE OF BROKER/DEALER REGISTRATION.—

(1) GOVERNMENT SECURITIES BROKERS AND DEALERS.—Section 15C(a)(2)(ii) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(a)(2)(ii)) is amended by inserting before "At the conclusion" the following: "The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 6 of this title, or a securities association registered under section 15A of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership.".

(2) OTHER BROKERS AND DEALERS.—Section 15(b)(1)(B) of such Act (15 U.S.C. 78o(b)(1)(B)) is amended by inserting before "At the conclusion" the following: "The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership.".

(c) INFORMATION SHARING.—Section 15C(d)(2) of such Act is amended to read as follows:

"(2) Information received by an appropriate regulatory agency, the Secretary, or the Commission from or with respect to any government securities broker, government securities dealer, any person associated with a government securities broker or government securities dealer, or any other person subject to this section or rules promulgated thereunder, may be made available by the Secretary or the recipient agency to the Commission, the Secretary, the Department of Justice, the Commodity Futures Trading Commission, any appropriate regulatory agency, any self-regulatory organization, or any Federal Reserve Bank.".

SEC. 11. OFFERINGS OF CERTAIN GOVERNMENT SECURITIES.

Section 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)) is amended by adding at the end the following new paragraph:

"(7) In connection with any bid for or purchase of a government security related to an offering of government securities by or on behalf of an issuer, no government securities broker, government securities dealer, or bidder for or purchaser of securities in such offering shall knowingly or willfully make any false or misleading written statement or omit any fact necessary to make any written statement made not misleading. For purposes of the preceding sentence, the term 'government security' shall not include any obligation subject to the public debt limit established in section 3101 of title 31, United States Code.".

SEC. 12. RULE OF CONSTRUCTION.

(a) IN GENERAL.—No provision of, or amendment made by, this Act may be construed—

(1) to govern the initial issuance of any public debt obligation, or

(2) to grant any authority to (or extend any authority of) the Securities and Exchange Commission, any appropriate regulatory agency, or a self-regulatory organization—

(A) to prescribe any procedure, term, or condition of such initial issuance,

(B) to promulgate any rule or regulation governing such initial issuance, or

(C) to otherwise regulate in any manner such initial issuance.

(b) PUBLIC DEBT OBLIGATION.—For purposes of this section, the term "public debt obligation" means an obligation subject to the public debt limit established in section 3101 of title 31, United States Code.

PURPOSE AND SUMMARY

This legislation amends the Securities Exchange Act of 1934 (Exchange Act) to provide the Securities and Exchange Commission (the Commission), the Secretary of the Treasury (the Secretary or the Treasury), and appropriate regulatory agencies (as defined in Section 3(a)(34)(G) of the Exchange Act)[1] with expanded authority to monitor the government securities market, detect and prosecute fraudulent or manipulative activities, permit all registered securities associations or appropriate regulatory agencies to establish and enforce sales practice regulations in this market, and monitor the public availability of market information. In addition, the legislation requires government securities brokers and dealers to develop and enforce internal controls aimed at preventing and detecting fraud and manipulation in connection with the purchase or sale of government securities.

The legislation would permanently reauthorize the financial adequacy and recordkeeping rulemaking authorities granted to the Secretary under Section 15C of the Exchange Act. It would add a new paragraph to Section 15C(d) of the Exchange Act that would require government securities brokers and dealers to furnish

[1] In the relevant 1986 legislation (see footnote 12 and accompanying textual discussion), Congress adopted a government securities specific definition or "appropriate regulatory agency" in deference to, and to preserve the regulatory interests of, the federal regulatory authorities for insured depository institutions.

records of government securities transactions to the Commission upon request for purposes of trade reconstruction. In addition, the bill would add a new subsection to Section 15C of the Exchange Act, that would give the Secretary authority to adopt rules requiring persons holding, maintaining, or controlling large positions in certain Treasury securities to file reports on such positions for the purposes of facilitating the monitoring of concentrations of positions in Treasury securities and assisting the commission in carrying out its responsibilities under the Exchange Act.

The bill also would amend Sections 15(C)(1) and 15(C)((2) of the Exchange Act to provide the Commission with authority to prescribe rules concerning fraudulent, deceptive, or manipulative acts, practices, devices and contrivances in connection with the purchase or sale of any government security. The bill would amend Section 15C of the Exchange Act to require every government securities broker and dealer to establish, maintain, and enforce written policies and procedures to prevent and detect fraud and manipulation in connection with the purchase or sale of government securities. The bill would amend Sections 15A(f) and 15C(b) of the Exchange Act to provide registered securities associations and the appropriate regulatory agencies with the authority to issue rules aimed at preventing fraudulent or manipulative acts and practices and to promote just and equitable principles of trade.

The bill would amend Section 23(b)(4) of the Exchange Act to require the Commission to report annually on the public availability of market information with respect to government securities. The bill would require the Secretary, in consultation with the Commission, to submit a report on the identity and nature of non-financial institution government securities brokers and dealers registered under Section 15C of the Exchange Act. Finally, the bill would provide for a joint study of the regulatory system for government securities by the Secretary, the Commission and the Board of Governors of the Federal Reserve System (Federal Reserve), as well as a study by the Comptroller General of the United States of the effectiveness of the regulation of government securities brokers and dealers.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 618 represents the response of this Committee to significant changes that have occurred in the government securities market since enactment of the Government Securities Act of 1986 (the GSA) and to scandals in the government securities market that have threatened to shake public confidence in the fairness and integrity of that market. These matters are discussed in detail in the following pages.

In crafting its legislative response, the Committee sought to preserve and encourage private sector initiatives, and sought to avoid burdensome and duplicative regulation by acknowledging and relying, whenever possible, on recent administrative and regulatory changes undertaken by the Treasury and the Federal Reserve,

which have been supported by the Commission,[2] legislating only in the instance of clear deficiencies after such changes or clear gaps in regulation were exposed by such scandals.

NATURE AND IMPORTANCE OF THE GOVERNMENT SECURITIES MARKET

The government securities market is widely considered to be the largest, most efficient, and most liquid securities market in the world.[3] In the broadest sense, this market consists of all transactions in Treasury securities, agency securities (including mortgage-backed government securities) and GSE securities.

Treasury securities are issued to finance the massive borrowing requirements of the U.S. government. The Treasury market also is used by the Federal Reserve to conduct its open market operations, which is the Federal Reserve's principal means of effectuating monetary policy. In addition, Treasury securities play a critical role as a benchmark for interest rates on dollar-denominated instruments in the U.S. and global economies.

As of August 31, 1993, the public debt of the United States amounted to $4.4 trillion dollars. Approximately $2.9 trillion of this total consisted of marketable Treasury securities. These marketable Treasury debt securities currently are issued in the form of bills (3-month, 6-month, and 1-year maturities), notes (2-year, 3-year, 5-year, and 10-year maturities), and bonds (30 year). Nonmarketable Treasury securities, including United States savings bonds and state and local government series securities, comprise the rest of the public debt.

Treasury bills, notes, and bonds are issued through periodic Treasury auctions. The Treasury oversees and regulates the auction process and the Federal Reserve Banks act as the Treasury's fiscal agent at each auction. The Commission has the responsibility for taking enforcement action against violations of the applicable securities laws and regulations in this area and throughout the government securities secondary market.[4]

In auctioning its securities, the Treasury seeks the highest price obtainable. High prices, in turn, translate into lower interest rates for the government and, by extension, lower costs to the taxpayer. Prices for government securities are affected by the degree of competition in the market. Therefore, the Federal Reserve Bank of New York encourages primary dealers, which currently include one depository institution and 36 brokerage firms, to be significant participants in each auction.

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[2] Department of the Treasury, Securities and Exchange Commission, Board of Governors of the Federal Reserve System, Joint Report on the Government Securities Market, xiii–xv (Jan. 1992) (hereinafter "Joint Report").

[3] Markets are considered to be efficient when investors can complete their transactions quickly and with low transaction costs, and if information is rapidly reflected in the price of the security. Markets are considered to be liquid when securities can easily and quickly be traded at prices that bear a relationship to the underlying market supply and demand.

[4] The Joint Report notes at p. xv:

Clarification of regulatory authority over primary dealers. In the future, direct regulatory authority over primary dealers will rest unambiguously with the primary regulator—in most cases, the SEC. Although the FRBNY [Federal Reserve Bank of New York] has no statutory authority to regulate the primary dealers, the primary dealer system may have generated the false impression in the marketplace that the FRBNY somehow regulates or takes responsibility for the conduct of primary dealers. To make clear that its relationship with the primary dealers is solely a business relationship, the FRBNY will eliminate its dealer surveillance program, while upgrading its market surveillance program.

Treasury rules limit the maximum amount of securities that may be awarded to a single bidder to 35 percent of any particular government issue at a Treasury auction, and do not recognize amounts bid at any one yield from a single bidder in excess of 35% of the public offering. This limitation is intended to prevent any one bidder from controlling any given issue of government securities. In September 1992, the Treasury began a one-year experiment, subsequently extended to 1994, to conduct its monthly auctions for 2-year and 5-year notes through a "Dutch auction." Under this method, all successful bids receive securities at the same price.

Secondary market activity begins when an auction of a new Treasury issue is announced and continues well after the auction takes place.[5] On the day of an auction, Treasury securities are issued to the primary dealers and other auction participants that have submitted tenders (securities are allocated to the lowest bidders by yield until the amount of the offer is covered; the amount awarded at the highest yield is pro rated among the bidders based on the principal amount of the bids at that yield). Subsequent purchases and sales of the issue occur through an over-the-counter market, in which investors, dealers, and brokers participate. Market participants also may conduct transactions in the secondary market directly or through the use of repurchase agreements.[6] In addition, trading takes place in a variety of Treasury derivative instruments.[7] Secondary market investors include individuals, state and local governments, pension funds, registered investment companies, insurance companies, brokers and dealers, and depository institutions.

Agency securities are issued as the direct debt obligations of certain federal agencies or as the obligations of government-sponsored enterprises (GSEs), including mortgage-backed government securi-

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[5] "When-issued" trading occurs during the period between the time a new Treasury issue is announced and the time it is actually issued. Prior to the auction, this activity facilitates the distribution process for Treasury securities and helps determine the price of the new issue by providing a gauge of market demand. Deliveries by market participants on when-issued trading occur at the time of issue of the new Treasury securities on the action settlement day. See Joint Report, at A–6.

[6] Repurchase agreement contracts (or "repos") are two-part transactions involving the initial sale of securities at specified prices with a simultaneous commitment to repurchase the same or equivalent securities at a specified price upon a specified date. Repos are used by dealers to obtain money to finance their securities inventories or to obtain securities to cover short positions, by various public bodies, financial institutions, and corporato investors to invest cash balances, and by the Federal Reserve, which uses repo transactions to implement monetary policy. The volume of repo transactions is now six times greater than the average daily volume of trading in Treasury securities. See U.S. Government Securities: More Transaction Information and Investor Protection Measures Are Needed 15 (GAO/GGD 90–114, Sept. 1990) (hereinafter 1990 GAO Report). See also Comment, The Government Securities Act of 1986, 36 Cath. U.L. Rev. 999 (1987).

[7] Derivative products based on Treasury securities include: STRIPS (principal and interest components of selected Treasury notes and bonds that have been separated, or stripped, at the option of the owner under terms prescribed by Treasury); forward contracts (normally custom-tailored contracts that settle on a date in the future and are traded on over-the-counter markets); financial futures (standardized futures contracts that set a price level for Treasury bills, notes, or bonds to be delivered on a specified future date, and are made and traded on futures exchanges regulated by the Commodity Futures Trading Commission); and options (standardized, exchange traded or customized, over-the-counter traded instruments which give the purchaser the right, but not an obligation, to buy or sell securities or futures contracts for securities at a given price for a set period of time). See Joint Report, at A–9. See also Handbook of U.S. Government & Federal Agency Securities & Related Money Market Instruments (Z. Goy, Ed., 34th Ed., 1990); (hereinafter Handbook of Money Market Instruments); Handbook of U.S. Treasury & Government Agency Securities, Instruments, Strategies and Analysis, (F. Fabozzi, Ed., 1990).

ties, or as agency guaranteed mortgage-backed securities.[8] Most agency securities are issued by the GSEs, which are entities established by an act of Congress that are provided with authorities to sell debt obligations in the financial markets, and which channel the proceeds from such sales to purposes the Congress has determined to be socially important, such as mortgage lending, agriculture, and educational loans. As the Joint Report states:

> Although the GSEs each were established by an Act of Congress and have special relationships with the federal government, they are each wholly privately owned. They do not receive direct funding from the federal government, nor are their operating policies directly determined by Congress. However, each of the GSEs may have special Congressionally granted powers, such as limited authority to borrow from the Treasury, and each may enjoy special advantages, including exemption for securities they issue from most provisions of federal and state securities laws and exemptions for the GSEs from certain state and local taxes.[9]

As of December 31, 1992, the total outstanding federal agency debt amounted to $18.9 billion. As of December 31, 1991—the most recent period for which data is available—the size of outstanding GSE debt obligations were significantly larger, with $408 billion in GSE debt issues, $731 billion in mortgagebacked securities, and $429.8 billion in GNMA-guaranteed mortgage securities.[10]

Agency securities issued to finance this debt consist of short-term notes sold at a discount and interest bearing notes and bonds. The GSEs use a variety of means to distribute these securities, including competitive bidding, placements with individual investors or dealers, underwritten transactions, allocations of securities to selling group members, and exchanges of mortgage-backed securities with other institutions.[11] The secondary market for GSE securities, like that for Treasury securities, is an over-the-counter market.

REGULATION OF THE GOVERNMENT SECURITIES MARKET

Historically, the government securities market has been exempted from much of the system of federal regulation governing the operations of other securities markets. Government securities are classified as "exempted securities" under the Securities Act of 1933 (Securities Act) and the Exchange Act. This exemption reflected the relatively small number of retail investors in the market, the perceived low degree of risk, and the perceived absence of market manipulation or fraud at the time that these statutes were enacted.

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[8] See Joint Report, at D–1 to D–6. See also Handbook of Money Market Instruments at 85–150 (description of various agency and GSE securities); Stigum, "Securities of Federal Government Agencies and Sponsored Corporations," in the Handbook of Fixed Income Securities 219–28 (1987).

[9] See Joint Report, at D–1. Securities issued by the GSEs are exempt from the registration requirements of the Federal securities laws, with the exception of the Federal Agricultural Mortgage Corporation ("Farmer Mac") and the College Construction Loan Insurance Corporation. See Letter from Commission Chairman Richard C. Breeden to Representative Edward J. Markey (Mar. 18, 1992).

[10] Id. at 1.

[11] See Joint Report, at D–2.

Prior to passage of the GSA,[12] the regulation of the government securities market was largely limited to the rules governing Treasury auctions pursuant to the public debt statutes and the general antifraud provisions of the federal securities laws. The public debt statutes grant authority to the Treasury to issue securities and administer the federal debt. Under these statutes, Treasury also has the authority to prescribe terms and conditions for the issuance and sale of these securities and to enforce these rules. In addition, Section 10(b) of the Exchange Act and Section 17(a) of the Securities Act, which apply to "any person," proscribe manipulative or deceptive devices or contrivances in connection with transactions in any security.

Prior to 1986, only those dealers in government securities who also dealt in non-exempt securities were regulated by the Commission. Banks dealing in government securities were regulated by the appropriate bank regulatory authorities. However, dealers, that were not financial institutions, who traded only in government securities, were not subject to any direct regulatory oversight.

The failure of several unregulated government securities dealers in the early 1980s demonstrated that the minimal regulation of the government securities market that then existed provided inadequate protections to investors. Between 1977 and 1985, 10 government securities dealers failed, causing substantial investor losses and shaking public confidence in the integrity of the market. As a result of the failure of one of these firms, ESM Government Securities Inc. of Fort Lauderdale, Florida, investors lost an estimated $300 million, triggering a run on 71 Ohio thrifts. The temporary closing of these financial institutions in turn precipitated a sharp rise in the price of gold and a decline in the value of the dollar. The failures of these government securities dealers and the absence of regulatory oversight with respect to such dealers led the Congress to enact the GSA.

As a result of enactment of the GSA, for the first time, all brokers and dealers engaged in government securities transactions were subject to a limited scheme of government regulation.[13] To carry out the mandate of the GSA to lessen the potential for dealer failures, and to protect customers' funds and securities in the event of a failure, Treasury was authorized to promulgate rules with respect to capital adequacy standards for government securities dealers, the acceptance of custody and use of customers' securities, the carrying and use of customers' deposits or credit balances, and the transfer and control of government securities subject to repurchase agreements and similar transactions. In furtherance of this limited regulatory scheme, Treasury was authorized to promulgate rules concerning recordkeeping, financial reporting, and auditing of government securities brokers and dealers. Many of these rules were designed specifically to improve the safety of repo transactions, particularly hold-in-custody repos.

[12] Public Law No. 99-571.

[13] For a more detailed description of the GSA and its implementation, see 1990 GAO Report; Joint Department of the Treasury, Securities and Exchange Commission, and Board of Governors of the Federal Reserve System Study of the Effectiveness of the Implementation of the Government Securities Act of 1986 (Oct. 1990) (hereinafter "1990 Joint Study"); and the Joint Report.

The rules promulgated by Treasury pursuant to this authority provided by the GSA incorporated or were very similar to certain rules already in place for financial institutions and registered brokers and dealers. Thus, the GSA's greatest practical impact was that it applied a limited regulatory scheme to the previously unregistered brokers and dealers (i.e., those who dealt exclusively in government securities).

In addition, the GSA required previously unregistered government securities brokers and dealers to register with the Commission and join a self-regulatory organization (SRO). Firms already registered with the Commission as general securities brokers or dealers under Section 15 of the Exchange Act or as municipal securities brokers or dealers under Section 15B of the Exchange Act were required to notify the Commission if they were conducting government securities transactions. Likewise, financial institutions that engaged in government securities broker or dealer activities were required to notify their appropriate regulatory agencies. Certain specific enforcement responsibilities were assigned to those federal agencies that had existing authority over entities participating in the government securities market (the Commission for registered brokers and dealers and the bank regulators for financial institutions). The Commission also was assigned authority for the previously unregulated government securities brokers and dealers.

In addition, the GSA provided to the National Association of Securities Dealers, Inc. (NASD) authority to adopt rules pertaining to advertising practices by its members who are government securities brokers and dealers, and it added to the Commission's general authority over clearing agencies under Section 17A of the Exchange Act authority over clearing organizations that clear transactions in government securities. Finally, the GSA expressly left intact the Commission's general antifraud authority over government securities transactions by any person.[14]

During its deliberations regarding the GSA, Congress was also concerned about the adequacy of price and trading information available to all participants in the government securities market. These concerns led the Congress to include a provision in the legislation requiring the General Accounting Office to perform a study of the nature of the trading system for government securities and the public availability of market information.[15]

The regulatory authorities provided under the GSA were circumscribed to address the specific abuses that had become apparent in the early 1980s, and the GSA successfully achieved these goals.[16] However, its review of the functioning of the market, as

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[14] House Comm. on Energy and Commerce, Report to Accompany H.R. 2032, H.R. Rep. No. 258, 99th Cong., 1st Sess. (September 9, 1985), (hereinafter "1985 House Report") n. 22 at 17.

[15] 1985 House Report at 36–37.

[16] In 1985, Treasury strongly opposed the Committee's legislation, expressing a preference for reliance on "existing market self-correcting mechanisms" and predicting that H.R. 2032 or any additional legislation in the government securities market "could have a significant adverse effect on the overall market and thus on the Treasury's cost of borrowing." See Regulating Government Securities Dealers: Hearings Before the Subcommittee on Telecommunications, Consumer Protection, and Finance on H.R. 2032, Serial No. 99–38 (June 11, 20 and 26, 1985), Testimony of John J. Niehenke, Acting Assistant Secretary, Department of the Treasury, at 352 et seq. However, the Treasury's predictions proved unfounded. The 1990 Joint Study reached the following unanimous conclusion: "[t]he implementation of the GSA regulations has met the objectives established by Congress in enacting the GSA. The rules have been timely and fairly

well as recent widely publicized abuses, have caused the Committee to determine that the regulatory structure in the government securities market needs further reform.

THE SALOMON BROTHERS REVELATIONS

The dramatic revelations in August 1991 of wrongdoing by employees of Salomon Brothers in conjunction with purchases and sales of Treasury securities threatened to undermine public confidence in the fairness and integrity of the government securities market and highlighted the need for reforms in the regulation of this market.

The government's investigation into illegal activities by Salomon Brothers employees began on May 29, 1991, after Treasury officials notified the staff of the Commission of trading irregularities stemming from the May 22, 1991 auction of two-year Treasury notes and informed them of an article about to be published in the press about a possible short squeeze in the market.[17] Following that notification, the Commission, the Treasury, and the Federal Reserve jointly began an informal investigation, including actively monitoring the market for the notes.

On June 3, 1991, the Committee's Subcommittee on Telecommunications and Finance initiated inquiries with the Commission, the Federal Reserve, and the Treasury "seeking a greater understanding of this incident and its broader implications for the GSA reauthorization process." The Subcommittee's inquiry focused, among other things, on questions regarding the causes and consequences of the reported squeeze.

In response, the Treasury informed tho Subcommittee that "a squeeze . . . can occur for a variety of reasons" and that "market manipulation may be, but it no necessarily, the cause for a squeeze."[18] The Treasury further reported that, "our discussions with market participants and our observations of market prices lead us to the conclusion that a squeeze . . . did in fact occur in the May two-year note."[19] The Treasury informed the Subcommittee that it was "concerned that squeezes in its securities may cause some market participants to question the fairness of the government securities market," but, at the same time, Treasury insisted that "its current authority to set auction rules and its rulemaking authority, including reporting requirements, under the GSA, are sufficient to handle this problem."[20]

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implemented; have not imposed excessive and overly burdensome requirements; have not impaired the liquidity, efficiency and integrity of the government securities market; and have improved and strengthened investor safety in the market. Most importantly, although some government securities brokers or dealers have failed or discontinued business since the inception of the GSA regulations, no customers have lost any funds or securities as a result of such occurrences."

[17] See Salomon Brothers and Government Securities: Hearing Before the Subcomm. on Telecommunications and Finance, 102d Cong., 1st Sess. (1991), (hereinafter "Salomon Hearing"); "Short-Term Treasurys Post Fresh Price Gains As Two-Year Notes Become Especially Attractive," Wall St. J., May 30, 1991, at C22. See also Donovan and Barry, "Treasury's 30-Year Issue Surges as Dealers Sell Short-Term Securities to Buy Long-Term Bonds," Wall St. J., May 31, 1991, at C10; and Berry, "Fed Studies Possible Squeeze On Sale of Treasury Securities," The Washington Post, May 31, 1991, at D1.

[18] Letter from Mary C. Sophos, Assistant Secretary of the Treasury (Legislative Affairs) to Representative Edward J. Markey, at 1 (July 1, 1991) (hereinafter "July Sophos Letter").

[19] July Sophos Letter, at 1.

[20] July Sophos Letter, at 2.

The Federal Reserve reported that:

> . . . a squeeze did occur in the market for those notes, but such squeezes are not all that unusual. The Federal Reserve does not know whether the concentrated bidding at this auction represented deliberate effort to manipulate the market, but, in a view of the great importance of maintaining investor confidence in the integrity of the government securities market, it may be worth taking another look at the guidelines that govern the bidding for Treasury securities. In the process of reviewing the rules and reporting requirements, however, it is crucial to guard against taking actions that would discourage investors from participating in the auctions or would impair the extraordinary liquidity of this market.[21]

Finally, the Commission staff responded to the Subcommittee's inquiries by reporting that:

> The Commission is in the process of examining the facts surrounding the auction and trading of this issue of two-year Treasury notes to determine whether a formal investigation is warranted. While the Commission is not prepared to comment on whether any market participant may have violated the federal securities laws, any potential manipulation of the government securities market would be viewed very seriously. If a manipulative short squeeze were in fact to take place in a particular issuance of Treasury securities, or if one or more market participants were to corner the market for a particular Treasury issue, the Division believes that the Commission would have sufficient authority under Section 10(b) to take appropriate action against those market participants.[22]

At the same time, Commission Chairman Richard Breeden informed the Subcommittee that:

> We do believe that this incident highlights the distinction between primary market auctions of Treasury securities and the secondary market for trading in Treasury and other government securities. The auction process is and ought to be regulated and controlled by the Treasury Department. However, the secondary trading market in government securities (including enormous volumes of non-Treasury issues) is otherwise similar to the securities markets regulated by the Commission and the securities self-regulatory organizations. Issues of manipulation, transparency, or sales practices do not turn on the identity of the primary issuer. Rather, they turn on the conduct of secondary market participants. Thus, in our view, it makes the most sense for these issues to be addressed under a framework of consistent functional regulation, subject to SRO regulation and SEC oversight. Specialized sales prac-

[21] Letter from Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, to Representative Edward J. Markey (June 19, 1992).

[22] Memorandum to Commission Chairman Richard C. Breeden, from Division of Market Regulation Director William H. Heyman, at 15 (June 25, 1991).

tices or manipulation standards for government securities markets that differed from standard rules and practices concerning manipulation or sales practices in other types of secondary market trading would create the risk of inconsistency, high cost, and confusion among both investors and registered representatives of broker-dealers.[23]

Subsequent events have graphically illustrated the validity of the Commission's concerns about trading activities in Treasury securities, and its call for enhanced powers to deal with fraud and manipulation in its regulation of the secondary trading market in government securities.

In late June and early July 1991, the Commission's Division of Enforcement sent several letters to Salomon Brothers and certain of its customers requesting production of documents. As a result of these document requests and other inquiries from governmental agencies, Salomon Brothers retained an outside law firm to conduct an internal review of the firm's activities in the May 1991 two-year note. This internal review soon revealed bidding violations by Salomon employees in conjunction with the May 22, 1991 two-year note auction and four other Treasury auctions: the December 27, 1990 four-year note auction, the February 7, 1991 30-year bond auction, the February 21, 1991 five-year Treasury note auction, and the April 25, 1991 five-year note auction.[24]

On August 9, 1991, Salomon Brothers issued a press statement disclosing that it had "uncovered irregularities and rule violations in connection with its submission of bids in certain auctions of Treasury securities"[25] and announced that the former head of government securities trading and his deputy had been dismissed from their positions. Subsequent disclosures revealed that the highest officers of Salomon Brothers were aware as early as April of 1991 of misconduct in the February 1991 auction, but took no action to report the wrongdoing to proper authorities and allowed the culpable employees to remain in their positions. Thereafter, additional violations were committed in connection with auctions of U.S. Treasury securities.[26] On August 18, 1991, following these disclosures and discussions between senior management of Salomon Brothers and federal officials,[27] the Chairman and Chief Executive Officer of Salomon Brothers, the President, and Vice Chairman all resigned.

The Commission's subsequent investigation into wrongdoing in the government securities markets was extensive. Over 400 subpoenas were issued and more than 200 witnesses gave testimony under oath, producing more than 30,000 pages of transcripts, and hundreds of thousands of pages of records and other documentary evidence of various kinds.[28] The Commission filed a complaint against Salomon Brothers on May 20, 1992. The Commission's in-

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[23] Letter from Commission Chairman Richard C. Breeden to Representative Edward J. Markey, at 1–2 (June 27, 1991).

[24] See Warren E. Buffett, "Statement of Salomon Inc., Submitted in Conjunction with the Testimony of Warren E. Buffett" (hereinafter "Buffett Testimony") in Salomon Hearing, at 22–34.

[25] See Salomon Brothers News Release (Aug. 9, 1991).

[26] See Salomon Brothers News Release (Aug. 14, 1991).

[27] See Salomon Hearing, Testimony of E. Gerald Corrigan, President, Federal Reserve Bank of New York, at 87.

[28] See "SEC Files and Settles Salomon Brothers Case," SEC News Release No. 92–94 (May 20, 1992).

vestigation determined that Salomon Brothers had submitted or caused the submission of ten false bids totaling $15.5 billion, in nine auctions of Treasury securities between August 1989 and May 1991. These false bids resulted in Salomon Brothers' acquiring over $9.5 billion worth of Treasury securities in violation of applicable limitations established by the Treasury.[29]

In addition to the submission of false customer bids at Treasury auctions, the Commission concluded that Salomon Brothers was responsible for numerous other violations of the federal securities laws. The investigation revealed that Salomon Brothers' senior management, after learning in April 1991 that the individual in charge of Salomon Brothers' government securities trading activities and submitted a false bid in a February 1991 auction,[30] failed to supervise adequately the individual and took no action to investigate the individual's activities or place limitations on his trading activities.

In addition, the Commission concluded that Salomon Brothers had violated the disclosure requirements of the federal securities laws by failing to disclose, in a registration statement filed with the Commission in July 1991, the material facts the firm had learned from its internal investigation into wrongdoing at Salomon Brothers' government securities trading desk. Salomon Brothers also violated federal disclosure requirements when it failed to disclose, in its August 9, 1991 press release, that senior management had known about one of the false bids since April 1991. Furthermore, Salomon Brothers had routinely overstated the size of customer orders to GSEs and falsely represented to corporate issuers that it was purchasing their securities as agent for other purchaser, when it was actually purchasing the securities as principal. Moreover, the investigation revealed that, at the end of 1986, Salomon Brothers had entered into a series of fictitious tax trades which allowed the firm to falsely claim $168 million in trading losses, an action which resulted in Salomon Brothers underpaying its federal income taxes for 1986. Finally, in connection with its false bids, fictitious trades, and other activities, the investigation found that Salomon Brothers had committed numerous violations involving false books and records.

The Department of Justice also determined that Salomon Brothers was culpable for the submission of false and unauthorized bids in violation of federal forfeiture laws, the False Claims Act, and common law, as well as unlawful agreements with respect to trading in violation of the Sherman Act.[31]

For its violations of the federal securities laws and other laws, Salomon Brothers agreed to pay a total of $290 million as civil sanctions and forfeitures, and to establish a claims fund to compensate those damaged by its actions. Salomon has also consented to the entry of injunctive relief barring it from further violations of the federal securities laws.

[29] Id. at 3. See also SEC Lititation Release No. 13246, at 2 (May 20, 1992).
[30] See "SEC Files and Settles Salomon Brothers Case," SEC New Release No. 92–94 at 4–5 (May 20, 1992).
[31] See Press Release issued by the United States Attorney for the Southern District of New York, at 1 (May 20, 1992).

On December 2, 1992, the Commission filed a civil action in U.S. District Court for the Southern District of New York against Paul W. Mozer, the former head of Salomon's Government Trading operations, and Thomas F. Murphy, the former head trader on the Government Trading Desk.[32] The Commission charged the defendants with, among other things, violations and aiding and abetting of violations of the recordkeeping and antifraud provisions of the Exchange Act in connection with the submission of false customer bids in auctions of U.S. Treasury securities. The Complaint alleged that Mozer was responsible for the submission of eight false bids, totaling $13.5 billion, in seven auctions of U.S. Treasury securities. The Complaint alleged that Murphy was involved in the submission of three false bids, two of which were not authorized by the customers and one of which was only partially authorized. The Complaint seeks, among other things, an order enjoining Mozer and Murphy from further violations, the imposition of appropriate civil penalties, and an order prohibiting Mozer from serving as an officer or director of any publicly-held company. The action is currently being litigated.

On December 3, 1992, the Commission instituted an administrative proceeding against John H. Gutfreund, the former Chairman and Chief Executive Officer of Salomon, Thomas W. Strauss, the former President of Salomon, and John W. Meriwether, a former Vice Chairman of Salomon and the head of the firm's Fixed Income Trading activities.[33] In that proceeding, the Commission found that Gutfreund, Strauss and Meriwether had each failed reasonably to supervise Moser after learning that Moser had submitted a false bid in an auction of U.S. Treasury securities. Pursuant to offers of settlement submitted by each respondent, the Commission ordered Gutfreund to comply with his undertaking not to associate in the future with any regulated entity in the capacity of chairman or chief executive officer and ordered him to pay a civil penalty of $100,000; ordered that Strauss be suspended from association with any regulated entity for a period of six months and pay a civil penalty of $75,000; and ordered that Meriwether be suspended from association with any regulated entity for a period of three months and pay a civil penalty of $50,000. In conjunction with these proceedings, the Commission also issued a Report of Investigation pursuant to Section 21(a) of the Exchange Act concerning the supervisory responsibilities of certain brokerage firm employees in circumstances such as arose in this matter.

Commission and Justice Department investigations are continuing into possible illegal actions involving bidding or trading activities in several other Treasury auctions.[34]

IMPROPER PRACTICES RELATING TO GSE SECURITIES

Shortly after its initial disclosures about abuses in the Treasury auction process, Salomon Brothers also revealed that it had placed inflated orders with and made false statements to certain GSEs.

[32] See SEC Litigation Release No. 13453 (December 2, 1992).

[33] See Securities Act Release No. 34–31554 (December 3, 1992).

[34] See Joint Report at C–6, n. 14, which reports that "[t]he SAC is also investigating other reports of possible short squeezes in connection with recent Treasury auctions. Because these investigations are ongoing, more detailed information cannot be disclosed publicly at this time."

Salomon Brothers' admissions triggered an investigation by the Commission into industry practices in this area, which revealed widespread violations of the books and records provisions of the federal securities laws.

On January 16, 1992, the Commission, in conjunction with the Office of the Comptroller of the Currency (OCC) and the Federal Reserve, announced that it had initiated administrative proceedings against 98 registered broker-dealers, registered government securities broker-dealers, and/or dealer banks for improper practices relating to the sale of debt securities of several GSEs (the Federal Home Loan Banks, the Federal Farm Credit Banks Funding Corporation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association).[35]

The 98 firms consented, without admitting or denying the allegations, to a finding that they had committed "willful violations" of the recordkeeping requirements established pursuant to Sections 15C and 17(a) of the Exchange Act and 17 C.F.R. Part 404 and Rules 17a–3 and 17a–4 promulgated thereunder. The violations involved creating and maintaining false books and records relating to customer orders and sales. The Commission stated that the creation of false books and records by these firms was "a necessary part of a scheme to inflate customer orders and sales figures in an effort to maintain or increase allocation" of GSE securities.[36] The 98 firms agreed not to commit further violations, to adopt policies and procedures aimed at preventing a recurrence of such violations in the future, and to pay civil penalties of up to $100,000 per firm.

NONCOMPETITIVE BIDDING ABUSES

The Treasury currently allows noncompetitive bids of up to $1 million for Treasury bills and up to $5 million for Treasury notes and bonds. The purpose of these noncompetitive bids is to allow smaller and less sophisticated bidders to participate in Treasury auctions. According to the Treasury, "this bidding privilege was designed for smaller investors who may not have the expertise or resources to compete with dealers and trading firms, and it furthers the goal of broad ownership of the federal debt."[37] These noncompetitive bidders purchase Treasury securities at the average weighted yield of accepted competitive bids, unlike the generally larger and more sophisticated competitive bidders, who receive the yields they actually bid.

In the aftermath of the Salomon Brothers scandal, Treasury and Federal Reserve Bank of New York staff initiated a systematic review of noncompetitive bids submitted in auctions over the preceding two years, focusing in particular on those at the maximum amount submitted by dealers for lists of customers.[38]

The Joint Report indicated that the noncompetitive bidding abuses that were investigated:

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[35] See SEC Release No. 34–30255 (Jan. 16, 1992); SEC Release Nos. 34–30192 thru 30251 (January 16, 1992).

[36] See January 1992 SEC Release No. 34–30255 at 10.

[37] Letter from Assistant Secretary of Treasury (Legislative Affairs) Mary C. Sophos, to Representative Edward J. Markey, at 1 (Apr. 19, 1992) (hereinafter "April 1992 Sophos Letter").

[38] April 1992 Sophos Letter, at 2.

[g]enerally involved dealers skirting these rules by effectively arranging to purchase for their own account large amounts of securities at the price paid by noncompetitive bidders. The pattern of abuse had been for a list of individuals—often employees of the firm—all to bid the maximum noncompetitive amount and then sell their positions to the firm very shortly after the auction.[39]

The Joint Report also indicated that several market participants had discovered a tendency for the secondary market prices of Treasury securities to be slightly higher than the average auction price immediately following the announcement of the auction results.[40] Because of this tendency, Treasury securities sold to employees or customers of these market participants on a noncompetitive basis could be resold immediately after the auction, almost invariably for a profit.

The Treasury has considered these actions to be inconsistent with the purposes of the noncompetitive bidding rules.[41] In some instances, market participants may have violated the prohibition against pre-auction agreements.[42] In those cases in which there was evidence of clear abuse, the Treasury has referred the matter to the Commission for further investigation and possible enforcement action.[43] In addition, the Treasury and the Federal Reserve have stated they are now "engaging in more aggressive policing of noncompetitive bids" and "developing a mechanism for interdistrict policing of noncompetitive bids."[44]

In addition to these actions, on January 22, 1992, the Treasury announced certain changes in the noncompetitive bidding rules aimed at prohibiting a noncompetitive bidder from submitting a bid for its own account in the same auction in which it is submitting a competitive bid for its own account.[45] At the same time, Treasury also announced that noncompetitive bidders were prohibited from trading in the security prior to the auction. On April 29, 1993, Treasury successfully implemented its Treasury Auction Automation Processing System (TAAPS). The system introduced electronic bidding for Treasury auctions to large bidders and processes information for the Treasury in an automated environment. As further refinements are made to TAAPS, it should improve policing of noncompetitive bids by facilitating efforts by Treasury and Federal Reserve officials to detect improper or illegal activities.

AREAS OF LEGISLATIVE FOCUS

While the agencies have taken certain actions that may help rectify the wrongdoing that has been uncovered,[46] it has become clear

[39] Joint Report, at 8.
[40] Id. at B–50.
[41] See id. at 8. See also April 1992 Sophos Letter, at 2.
[42] Joint Report, at B–50.
[43] The Commission recently completed two enforcement actions relating to noncompetitive bidding abuses. See SEC Release No. 34–32828 (September 2, 1993); SEC Release No. 32827 (September 2, 1993).
[44] Id. at 8.
[45] See "Treasury Modifies Auction Rules," Public Debt News, Bureau of the Public Debt, Department of the Treasury (January 22, 1992).
[46] For example, in response to the Salomon violations, the Treasury, in conjunction with the Federal Reserve, implemented a number of administrative and regulatory changes to: broaden

Continued

to the Committee that the limited regulatory structure erected by the GSA needs to be modified in view of recent events. Specifically, the Committee believes that improving the information available to regulators regarding large positions held by market participants is critical to assuring that regulators have the ability to monitor risks to the stability and integrity of the government securities market. The Committee has also determined that there is a need to improve recordkeeping by government securities brokers and dealers so that regulators can readily obtain information that is needed to carry out their responsibilities. Furthermore, the Committee believes there is a need to strengthen internal controls at government securities brokers and dealers in order to better assure their compliance with the antifraud and antimanipulation provisions of the Exchange Act. Finally, the Committee believes that regulators and SROs should have the authority to extend normal sales practice standards and antifraud and antimanipulation rules under Section 15(c) of the Exchange Act to the government securities market.

1. RECORDKEEPING

The Committee's investigation into the Salomon Brothers scandal and its ongoing review of the government's investigation into wrongdoing in the government securities market have revealed serious recordkeeping problems at certain government securities brokers and dealers. These problems include inadequate recordkeeping practices, as well as difficulties encountered by regulators in obtaining records necessary to reconstruct trading activity for particular surveillance inquiries or enforcement inquiries and investigations.

The Salomon Brothers and GSE scandals revealed serious inadequacies in current recordkeeping practices by government securities brokers and dealers. The Chairman of the Commission testified before Congress that the Commission's investigations of wrongdoing in the government securities market require some market reconstruction. In addition, the Chairman indicated that records of transactions of substantial size in some cases may be nonexistent or consist only of handwritten ledger entries, which may be deliberately altered after the fact.[47] Furthermore, because there has been no system for an audit trail for government securities, reconstructing the market has required obtaining transaction records from various market participants and manually combining information regarding thousands of transactions to develop a picture of the market—a difficult and time-consuming task.

The process of reconstructing trading has been further complicated by the lack of a requirement for standardized records. Currently, the quality of the recordkeeping systems may range from comprehensive computerized records to handwritten ledgers with entries "whited out" and new entries made over the whiteout. Records reflecting customer orders are sometimes no more than

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participation in auctions; strengthen enforcement of auction rules; detect and combat short squeezes (e.g., reopening policy); accelerate auction automation; consolidate auction rules in a uniform offering circular; and strengthen noncompetitive auction rules. See Joint Report at xiii–xv for a more detailed discussion of these actions.

[47] See Statement of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Before the Subcomm. On Domestic Monetary Policy of the House Committee on Banking, Finance, and Urban Affairs 12–13 (Apr. 28, 1992).

notes or a handwritten ledge.[48] Moreover, in some cases, informal handwritten records made in connection with an auction were not retained after the auction. In some cases, there has been a lack of records explaining the allocation of Treasury securities obtained in certain auctions between a firm's proprietary accounts and its customer accounts. Without such information, it is difficult to determine whether firms are submitting unauthorized customer bids.

There are also reported inadequacies in records relating to the timing of orders and transactions. In some cases, there have been few or no reliable records of the times of execution of orders. In other cases, such records may have been kept, but there were either inconsistent methods used to record times of executions or unreliable timestamping practices. In instances in which brokers or dealers maintained computerized records of the times of transactions, the accuracy of such records has varied, depending upon when such transactions were input into the system.

The Committee is greatly concerned that inadequate recordkeeping by government securities brokers or dealers may interfere with the Commission's ability to carry out its responsibilities to enforce the securities laws and take action against fraud or manipulation. The Committee notes that the amendments to the recordkeeping provisions of Section 15C of the Exchange Act do not provide any new grant of recordkeeping rulemaking authority to either the Commission or Treasury. Because Treasury will have ample authority, upon reauthorization, to adopt the necessary recordkeeping rules for all government securities brokers and dealers, as does the Commission for registered broker-dealers, the Committee has determined that there is no need to legislate in this area. Nevertheless, the Committee expects the Commission and the Treasury promptly to take the necessary steps under their existing authorities to assure that appropriate records are made and maintained by all government securities brokers and dealers.

In addition, the Committee is sensitive to the concerns raised by the Commission regarding the lack of routine reporting through an audit trail for government securities. Commission Chairman Richard Breeden's testimony before the Subcommittee indicated that:

> Brokers and dealers in government securities have heretofore been exempted from any reporting system requirements that would permit creation of audit trails or market surveillance systems. Without such surveillance systems, detection of fraudulent transactions or market manipulation will be, I'm afraid to say, quite unlikely. Unless losses become very large, as was true in the Salomon case, such activity will quite possibly go undetected.[49]

However, the Committee is also sensitive to the private sector's concerns about the costs of such systems. Furthermore, the Joint Report stated that "the SEC is not convinced that the full equity market audit trail need be replicated in the government securities

[48] See Salwen and Connor, "Probe of Salomon Scandal Slowed by Spotty Records," Wall St. J., May 6, 1992, at C1.
[49] Statement of Commission Chairman Richard C. Breeden, in Government Securities Reform: Hearings Before the Subcommittee on Telecommunications and Finance, of the House Committee on Energy and Commerce, 102d Cong., 1st Sess. 164 (1991).

market at this time."[50] The Commission instead has indicated that "a partial audit trail could be constructed by combining transaction information from GSCC [Government Securities Clearing Corporation] with price and volume information from GOVPX [a joint venture of several primary dealers and interdealer brokers] (and perhaps Cantor [Fitzgerald Securities Corporation, which disseminates information through Telerate])."[51]

The Committee believes that, to the extent that transaction information is available through transaction information systems and GSCC data, it may be possible for the Commission, working together with the private sector, to create a cost-effective partial audit trail without any additional grant of legislative authority.[52] The Committee encourages the Commission and tho private sector to work cooperatively toward that end. Further, Section 3 of the bill assures the Commission of access to essential trade information on request, and Section 4 of the bill authorizes Treasury to establish large position reporting to identify the holders of securities that are in short supply. Accordingly, the Committee has determined that it need not provide broader audit trail authority at this time. Without an assurance of continued transparency, however, the Committee believes that the need for a full audit trail likely would increase. The Committee therefore intends to monitor both the level of price transparency in the government securities market, and the extent to which the lack of a full audit trail system for government securities hampers the ability of the Commission to carry out its statutory responsibilities. To assist the Committee's oversight efforts in this area, the Committee has requested that the study of the regulatory system of government securities mandated under Section 9 of the Act identify deficiencies in available audit trail systems and assess the impact of those systems on surveillance and enforcement.

2. LARGE POSITION REPORTING

The events surrounding the Salomon Brothers revelations have demonstrated the necessity for regulators to obtain better access to information regarding market developments in order to conduct market surveillance and obtain early warning of potential sources of systemic risk.[53]

In order to monitor developments in the Treasury securities marketplace and better police against fraud or manipulation, the Committee believes that the government needs surveillance tools similar to those employed in other financial markets. One of the more useful tools that regulators in the commodities and equities market currently have is the ability to obtain information regarding the trading activities of major market participants. In the government securities market, no similar statutory authority has existed which would authorize federal regulators to require all market participants to make information available regarding large positions

[50] Joint Report, at 24.

[51] See id. The potential use of GOVPX information for purposes of constructing a partial audit trail would be aided by the availability of this information in digital feed format.

[52] The Committee understands, however, that the construction of a partial audit trail would require a commitment of additional resources and the cooperation of GSCC and GOVPX.

[53] See, for example, Securities Firms: Assessing the Need to Regulate Additional Financial Activities (GAO/GGD-92-70 April 1992).

being assumed in the marketplace, and currently government securities brokers and dealers only report such information on a voluntary basis.[54]

The Treasury, the Commission, and the Federal Reserve Bank of New York have all recommended that backup authority be enacted for the government to require disclosure of large positions in Treasury securities held by any market participant.[55] The purpose of such reporting would be similar to the purpose of the position reporting that is done in the commodity futures markets—it would enable government agencies to monitor market developments, particularly those associated with concentrated positions.

In the Joint Report, the Treasury announced that it will provide the market with an additional supply of any Treasury security that is the subject of an acute, protracted short squeeze. The Treasury also announced that it will consider implementing alternatives to the current sealed bid, multiple price auction technique that may lessen the potential for market participants to violate the auction rules or submit fraudulent bids as part of any future scheme to "squeeze" other participants in the secondary trading market. The Committee understands that this authority will be utilized without prior determination of whether or not the situation is a result of manipulation. Nevertheless, the Committee believes that the ability to obtain information regarding large positions being assumed in the Treasury securities market is important in enabling those charged with market surveillance and enforcement to understand the causes of market shortages before they become acute or prolonged. This authority would assist the Secretary in making a decision to reopen an issue. Information regarding holders of large positions may also be critical to the Commission in carrying out its enforcement responsibilities under the federal securities laws.[56]

Large position reporting also would be useful in assuring that regulators can monitor the positions of major market participants other than government securities brokers or dealers under certain circumstances. In particular, it will provide assurance that the government can compel disclosure of position information when necessary from all large market participants, including a group of relatively unregulated entities called "hedge funds."[57] Regulators report that these investment funds "have recently begun to play a major role in the government securities market" and that they have "the capacity to assume large positions in Treasury securities because of their size, capacity for leverage, and willingness to take substantial risks with their capital."[58] The Committee notes that the sheer size of the positions taken by these investment funds, and their largely unregulated nature, have raised serious concerns

[54] An interagency market surveillance working group, consisting of representatives of the Federal Reserve Bank of New York, the Treasury, the Commission, the Federal Reserve, and the Commodity Futures Trading Commission, has been established to monitor developments in the government securities market on a regular basis, as was recommended in the Joint Report. See Joint Report, at 22–23. See Stamas and Davis, "Possible Short Squeeze in Five-Year Notes has Treasury Market Regulators on Alert," Bond Buyer, January 28, 1992, at 2; Gasparino, "Treasury on Alert for Possible Repo Squeeze," Bond World, Jan. 27, 1992, at 1.

[55] Joint Report, at 21.

[56] The Committee expects that the Commission and the Treasury would work cooperatively to ensure that any position reporting system would be compatible with recordkeeping requirements established by the Treasury and the Commission.

[57] See Joint Report, at B–64 to B–70.

[58] See Joint Report, at B–64.

regarding their ability to manipulate the market for government securities without detection.

At the same time, the Committee emphasizes that holding a large position does not create a presumption of manipulative or other illegal intent. Further, no information on those positions would be disclosed to tho public.

3. INTERNAL CONTROLS

The Committee believes that tho Salomon Brothers scandal and its aftermath have amply demonstrated the need to heighten the commitment of government securities brokers and dealers to assuring that their employees comply with the applicable provisions of the federal securities laws. To help deter fraud and manipulation in the government securities market, the Committee believes that it is necessary to reemphasize the need for government securities brokers and dealers to establish internal controls to prevent such violations. The general responsibility of brokers and dealers to supervise their employees in order to prevent violations of law is well established. For example, Section 15(b)(4)(E) of the Exchange Act authorizes the Commission to impose various sanctions on firms who do not meet their responsibilities.[59] In addition, self-regulatory organizations have rules requiring the establishment of supervisory procedures.[60]

To supplement these general rules, the Committee believes it is necessary that firms not only impreve the supervision of their employees but that thoy implement written policies and procedures designed to prevent fraud and manipulation in connection with transactions in government securities. In addition, the bill would permit each appropriate regulatory agency, in its discretion, to require such policies and procedures with respect to other provisions of the federal securities laws. The Salomon Brothers scandal revealed both that certain employees were willing to flout the laws and that the firm's senior management explicitly or implicitly condoned such actions. Comprehensive compliance policies provide mechanisms that encourage low- and mid-level employees to meet their legal obligations and signal to such employees that senior management will not tolerate violators.[61]

4. PUBLIC ACCESS TO MARKET INFORMATION

The Committee long has been concerned with obstacles to the dissemination of government securities market information and the lack of price transparency in this market. In general, the term "transparency" in this context means the ability of all market participants to observe market activity, especially dealer trades and

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[59] Section 15(b)(6)(A) authorizes similar actions against individuals. See also Section 15C(c)(1)(A) and (C).

[60] See NYSE Rule 342 (requiring supervision and control over each office, department, and business activity) and Article III, Section 27 of the NASD Rules of Fair Practice (requiring systems to supervise the activity of each registered representative and associated person to achieve compliance with the securities laws and NASD rules).

[61] In August 1991, the new Chairman and Chief Executive Officer of Salmon Brothers announced a comprehensive compliance program consisting of written materials, training sessions for personnel, and a compliance committee composed of Salomon's Board of Directors. See Buffett Testimony, at 57–58.

quotes, at the time that it is occurring, or as soon thereafter as is technologically practicable.

Transparency produces several benefits. It can help to improve the liquidity and efficiency of the market by assuring that comprehensive price and trading information is disseminated to as many market participants as possible, so that the market price of securities will move more quickly to reflect the underlying economic value of the security. In addition, price transparency provides investors with greater protection from abuses by reducing the disparity of information that may exist between market "insiders" and "outsiders" and providing public investors with more equal access to information that is available to primary and other dealers. With equal access to pricing information, investors in government securities can better evaluate the quality of execution and the value of their securities. This information would be particularly useful for investors evaluating prices for less actively traded government securities, where bid-asked spreads may be wider. Such data also can encourage competition among dealers and assist regulators in discovering possible manipulation, fraudulent mark-ups, or other wrongful conduct, or in determining the state of the market at any point in time.

The Committee first became concerned about the inadequacy of price transparency in the government securities market during its consideration of the GSA. These concerns led the Committee to include in the GSA a provision mandating a General Accounting Office study of the blind broker trading system[62] in the secondary market for government securities. The legislative history of the GSA indicated that this provision was adopted because Congress believed "it is essential that Congress have sufficient information available to it to facilitate an evaluation of whether quotations for [government] securities and the services of government securities brokers are available on terms which are consistent with the Exchange Act and the public policy goals" of the GSA.[63]

The General Accounting Office prepared two reports in response to this provision.[64]

In December 1987, GAO issued its preliminary report to Congress, which found that: (1) wider dissemination of government securities market information would not introduce additional risk to the safety of the market; (2) expanded information access would likely contribute to greater efficiency and equity in the government securities secondary market; and (3) not enough was known about the specific nature and speed of availability of the information that would be of most use to the market to justify requiring federal regulations aimed at expanding information access at that time [1987].[65] On the basis of these findings, GAO recommended that

[62] See U.S. Government Securities: Expanding Access to Interdealer Brokers' Services (GAO/GGD–87–42, Feb. 1987), Transcript of a Hearing Held Jointly by GAO, the Department of the Treasury, the Federal Reserve System, and the Securities and Exchange Commission on February 4, 1987, Washington, D.C. (hereinafter "Feb. 1987 Hearing").

[63] See Statement of Representative John D. Dingell, on H.R. 2032, The Government Securities Act of 1986, Congressional Record [vol. 132, No. 136] at H9251 (October 6, 1986).

[64] See U.S. Government Securities: An Examination of Views Expressed About Access to Brokers' Services (GAO/GGD–88–8, Dec. 1987) (hereinafter "Dec. 1987 GAO Report"); and 1990 GAO Report.

[65] See Dec. 1987 GAO Report at 5, 72–6.

"market participants should be given the opportunity to make arrangements necessary to accomplish the expansion of information access before regulatory intervention is required."[66]

At the time, the Treasury and the Federal Reserve agreed with the GAO as to the desirability of improved price transparency in the government securities market. The Commission, while agreeing with the desirability of improved access to market information, disagreed with GAO's conclusion that regulatory action was not needed at the present time. The Commission argued that "there is an inherent structural tension in the current system that may prevent the prompt dissemination of trade and quote information."[67] The primary dealers and interdealer brokers already had full access to trade and quote information, the Commission noted, and it was not necessarily in their interest to make such information available to their trading competitors and customers.

In 1990, the GAO reversed its previous position on the need for regulatory action to ensure the availability of market price information, reporting that "it appears that the SEC's skepticism has been borne out and that a legislative mandate will be needed to ensure development of satisfactory information access arrangements."[68] The GAO explained that it had decided to support federal regulation of price transparency because:

> In the 2 years since GAO concluded that transaction information should be made public, interdealer brokers have made several efforts to arrange for greater public access to the information. However, these arrangements have faltered, in part because of brokers' concerns about possible adverse reactions on the part of the primary dealers.[69]

In a July 3, 1990 letter, the Treasury indicated that, "we support your recommendation that Congress should mandate public access and provide Federal rulemaking authority to prescribe regulations, as needed, to ensure that information access is expanded."[70]

However, in their October 1990 study of the effectiveness of the GSA, Treasury, the Federal Reserve, and the Commission could not reach a consensus on the best approach to addressing the need for expanded access to government securities price information.[71] The 1990 Joint Study reported that increased access to information on the current bids and offers of more broker-dealers would be beneficial to the public interest, and would "further enhance the efficiency and liquidity of the government securities market."[72] The study suggested that expanded access to such information would be particularly useful in helping investors judge actual or potential transaction prices in the market for less actively traded government securities, where bid-asked spreads may be wider.[73]

The three agencies agreed that "despite a number of attempts by various market participants, some of which are currently ongoing,

[66] Id. at 76.
[67] See id. at 95.
[68] See 1990 GAO Report, at 81.
[69] See id., at 6.
[70] See Letter from Michael E. Basham, Acting Assistance Secretary for Domestic Finance, to Assistant Comptroller General Richard L. Fogel, reprinted in 1990 GAO Report, at 104.
[71] See 1990 Joint Study at v, 85–87.
[72] Id. at 86.
[73] Id. at 87.

there has been no significant increase in the dissemination of government securities price information."[74] They further agreed that "absent a federal requirement for price disclosure, there is little reason to believe that these or other future attempts will be any more successful."[75] Notwithstanding their agreement on the nature of the problem and the need for regulation, the three agencies could not reach a consensus on the best approach for addressing the problem.

Subsequent private sector efforts have provided encouraging signs that price transparency in the government securities market is improving. For example, today Telerate Systems Inc. ("Telerate"), a wholly owned subsidiary of Dow Jones & Company, Inc., distributes information from Cantor Fitzgerald, on best bids and best offers in its system for U.S. government securities, the size associated with the best bids and best offers, and the volume and price of transactions executed with or through Cantor Fitzgerald. This service includes data on every issue of U.S. Government Treasury securities, U.S. Treasury STRIPS (zero-coupon securities), and non-quaranteed, publicly traded GSE issues (such as Federal National Mortgage Association debentures).

Another important development that has increased transparency in the government securities market, is the evolution of GOVPX, Inc., a joint venture of several primary dealers and interdealer brokers. GOVPX also provides data to market participants and continues to enhance its level of service. The Committee's report on H.R. 3927 identified three troubling limitations on the information available through GOVPX—the system did not provide information concerning agency securities or zero-coupon securities and it did not provide information concerning the size associated with each bid and offer.[76] Since our report, GOVPX has added size information and committed to add information on agency securities and zero-coupon securities.

Taken together, the information displayed on Tolerate and GOVPX has improved greatly the public exposure of government securities trades that are entered or processed through interdealer brokers and thus has increased substantially transparency in the government securities market. While these developments are not irreversible, the Committee does not believe a swift deterioration of transparency is likely at this time. In this regard, the Committee believes that the clear expression of support for transparency from this Committee, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, and the Public Securities Association, together with the prohibitions of the antitrust laws, make it unlikely that primary dealers will act to decrease the availability of interdealer brokers' quotation and transaction information.

Nevertheless, the Committee believes that more is needed to assure that momentum toward improved market transparency continues and is not reversed. Given the responsiveness of the private sector to the Commission's observations, which have been reiter-

[74] Id.
[75] Id. at 86–87.
[76] See Government Securities Reform Act of 1992, Report to Accompany H.R. 3927, (H. Report 102–722, Part 1) at 31.

ated by the Treasury, on the need to enhance GOVPX, such as by shifting to best bid and best offer from the best bid and corresponding offer, the Committee has determined that it its not critical, at this time, to grant a statutory backstop transparency rulemaking authority to the Commission. Instead, the Committee has determined, at this time, to rely on the constructive dialogue between the industry and the Commission, and has directed the Commission to monitor the transparency of the government securities market, report annually on steps taken to improve it, and recommend any necessary legislation. Because deterioration in market transparency, if any, would likely be gradual, annual Commission reporting should allow time to enact any necessary remedial legislation before any substantial deterioration in transparency occurs. The Committee expects that the Commission will consult with the Treasury regarding any substantial deterioration of transparency in the government securities market and the need for legislation to address transparency concerns.

5. SALES PRACTICE REGULATION

The government securities market is the only regulated United States securities market in which not all brokers and dealers are subject to codified sales practice standards and just and equitable principles of trade. This situation on results from a restriction in the Exchange Act on the ability of registered securities associations, such as the NASD, to impose their rules, including full "just and equitable principles of trade" requirements, on the government securities activities of their member firms.

Inconsistently, a registered securities exchange, such as the New York Stock Exchange (NYSE), may apply its rules to the government securities transactions of its members. Moreover, bank regulators have indicated that their examiners have the authority to apply the Municipal Securities Rulemaking Board's sales practice guidelines to the government securities activities of the approximately 280 bank dealers.[77]

NASD President Joseph Hardiman testified that, "since the 1,100 brokers and dealers who effect government securities transactions for which the NASD is the sole SRO sell the same products to the same types of investors no matter who regulates them, the omission of sales practice enforcement authority from the NASD under the GSA has created a significant regulatory gap that should be closed if investors are to be accorded even and fair protection."[78]

The General Accounting Office concurred in this assessment, stating that:

> [S]ales practice rules that supplement the basic antifraud provisions of the securities laws have become a fixture in securities markets in the United States. If these rules make sense for other securities markets, then they also make sense for the government securities market as

[77] See 1990 GAO Report at 50, 51.

[78] See Statement of Joseph Hardiman, President, National Association of Securities Dealers, in Government Securities Reform, at 251.

well, because there are similar opportunities for abuse in both types of markets.[79]

Recent developments in the government securities market have underscored the need for imposition of such sales practice rules. Traditionally, the government securities market has been a wholesale market dominated by primary dealers and large institutional investors who were presumed to be sophisticated regarding the suitability of the financial products they were purchasing. In recent years, however, there has been increased secondary market activity by retail investors, including smaller institutions, corporations, and individuals who are attracted to the market because of their desire for safe and secure investments. At the same time, new derivative products have been introduced based on Treasury and agency securities, which often are subject to greater risk than are the underlying securities. According to the Joint Report, these more risky securities include:

> [m]ortgage-backed securities and real estate mortgage investment conduits ("REMICS") issued or guaranteed by government agencies or GSEs, zero-coupon instruments such as STRIPS, agency mortgage-backed securities stripped into interest-only ("Ios") and principal-only ("Pos") pieces, and over-the-counter options on government securities. Many of these securities are backed by a U.S. government guarantee or are highly rated by nationally recognized statistical rating organizations, and are attractive due to their apparent higher returns. However, unsophisticated investors may not fully understand their complexity, risks, and speculative nature.[80]

There are indications that these more complex financial products have increased the risk to both individual and institutional investors resulting from sales practice abuses, including abuses relating to suitability, markup, and churning. Testimony provided to the Telecommunications and Finance Subcommittee indicated that one state lost $200 million in allegedly inappropriate speculative trading, and that one city lost over $60 million.[81] In addition, the Resolution Trust Corporation (RTC) has reported widespread government securities losses by savings and loan associations. In a survey of 632 failed institutions, the RTC found 238 instances where speculation on and unauthorized trading in government securities led to losses. All of the losses occurred in five separate areas, including U.S. Treasury instruments, derivative products used for hedging purposes, futures transactions, options hedging, and mortgaged-backed securities.[82] The RTC reported that approximately 50 failed institutions experienced large losses associated with U.S. Treasury

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[79] 1990 GAO Report, at 48.

[80] Joint Report, at 28.

[81] See Statement of Mario J. Palumbo, Attorney General of West Virginia, in Government Securities Reform, at 6; See also Statement of John J. Bilafer, Vice Chairman of Government Finance Officers Association, in Government Securities Reform, at 46.

[82] RTC Staff Responses to Request from the Subcommittee on Telecommunications and Finance for an Update of Previous Report Concerning Government Securities Activities in RTC Controlled Institutions, at 1 (March 6, 1992) (hereinafter RTC Staff Responses). Futures are not subject to regulation under the Exchange Act. Some derivative products, options, and mortgage-backed securities currently are subject to NASD regulations.

instruments.[83] While the RTC could not quantify losses in each of the 238 failed institutions it surveyed which had experienced government securities losses, an earlier RTC report identified 37 failed thrifts that had experienced a total of $640 million in government securities losses.[84]

State and local governments are significant customers of federal government securities and have an immediate and direct interest in assuring a sound market.[85] Almost 30 percent of the total cash and security holdings of municipalities is in federal securities, according to 1987 Census figures. As of the first quarter of 1990, state and local governments held $342 billion of the total U.S. Treasury debt of over $3 trillion. This represented approximately 20 percent of all federal securities, excluding those held by foreign investors or federal agencies.

In carrying out their fiduciary responsibilities, state and local finance offices attempt to maximize the investment earnings of their jurisdictions by investing in what they understand to be "safe" obligations, but about which they may lack a thorough technical understanding. Despite the efforts of professional associations representing state and local government finance officers in establishing model investment guidelines and educating their members, the record documents that unscrupulous or incompetent brokers and dealers often seek to take advantage of an unregulated market. Even guidelines and prudence will not guard a jurisdiction against abusive sales practices, and the burden of an unsuitable or overpriced investment by state and local governments falls on their taxpayers.

The Committee believes that it is appropriate to extend normal sales practice standards and other registered securities association rules to transactions in the government securities market by removing the statutory restrictions on the authority of such associations in the government securities market. This would allow the NASD to apply its sales practice rules, just and equitable principles of trade, and other rules to the government securities activities of its members. In addition, it would allow the NASD to adopt other appropriate rules for the government securities market, such as fidelity bonding requirements and qualification and testing requirements, which would allow the NASD to assure that personnel associated with member firms had the requisite knowledge to comply with sales practice and other rules.[86]

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[83] Twenty-six reported significant losses from derivative products used for hedging purposes or speculation; 39 had significant losses on futures transactions related to interest rate risk management; 28 showed losses as a result of the use of options for hedging interest rate risk; and 95 reported losses arising from mortgaged-backed securities (both government and commercially packaged) resulting from interest rate movements and prepayment risk. RTC Staff Responses, at 1–2.

[84] See Government Securities Reform, 127–38.

[85] In addition to the 50 state governments, there are 83,186 units of local government. Of these, 38,933 are general-purpose local governments. About 85 percent, or 33,211, of these general-purpose local governments have populations under 10,000. Periodically, due especially to the timing of tax receipts, governments, even small ones, have substantial amounts of money to invest.

[86] The NASD reports that "a search of our records shows that there are approximately 10,000 sales people doing a government-only securities business. Of these, approximately 1,000 have never been registered in any other category, which means they have not taken any NASD examination in order to sell these complex and often speculative securities. With regard to fidelity bonds, 63 firms do a government only business, and . . . are not required to have a fidelity bond that protects against theft or embezzlement of client assets. All other broker dealers are required to have a fidelity bond." See Letter from John H. Komoroske, NASD Director of Congres-

The Committee also believes that the appropriate regulatory agencies for insured depository institutions should be granted the authority to develop similar sales practice rules for those institutions. The Committee expects that the appropriate regulatory agencies (as defined in Section 3(a)(34)(G) of the Exchange Act) will coordinate with each other, the Commission, and the Treasury to develop consistent sales practice rules. This arrangement should assure that sales practice rules apply to all categories of government securities brokers and dealers, thus resulting in a level playing field for all market participants and comparable protection to customers of both financial institution and non-financial institution government securities broker-dealers.

The Committee notes that such regulatory agencies have expressed support for sales practice rules in this area. For example, the OCC has stated that:

> Few enforcement actions can be taken for U.S. government securities abuses because of the difficulties in applying the antifraud provisions in the securities laws. We support the adoption of sales practice rules that will supplement the antifraud protections in the securities acts. The new sales practice rules would permit regulatory agencies to impose sanctions on government securities brokers and dealers for violations without having to prove that the dealer intended to defraud a customer. The new regulations would promote the ability of regulators and investors to more easily obtain corrective action.[87]

The Committee believes that the regulatory distinctions previously drawn between sales practices of government securities and other securities are unwarranted. Principles of fairness require that, regardless of the type of security sold, dealers engaged in similar activities should be held to similar standards of practice. There is no evidence that corporate or municipal securities sales practice rules have overly burdened either market or have increased costs such that sales of these obligations have been impeded. No testimony has been presented to the Committee which demonstrates that the application of sales practice rules will increase costs in the government securities markets. Instead, increased confidence in the market should serve as an incentive for the purchase of government securities.

Accordingly, the Committee intends that sales practice rules regulating the activities of brokers and dealers issued under this Act shall encompass all categories of investors, including governmental investors of public funds, as is the case with sales practice rules in other markets. No distinction between investors on the basis of size of portfolio shall be made. For example, the appropriate analysis of suitability will be based on the sophistication and goals of the investor balanced against the characteristics of the trading strategy or investment recommended by the dealer.

In deciding to extend normal sales practice rulemaking authority to SROs and the appropriate regulatory agencies for insured depos-

sional and State Liaison, to Subcommittee staff, at 1 (March 18, 1992). See also 1990 GAO Report, at 59–60.

[87] Krause Letter, at 2.

itory institutions, the Committee has rejected proposals that would have subjected such sales practice rules to a veto by the Secretary. The Committee believes that such a provision would set a negative precedent of direct intrusion into the decisions of independent regulators, and believes that the legitimate interest of all the agencies in assuring that the U.S. government's debt is financed at the lowest possible cost to the taxpayers can be achieved through the consultation provisions contained in Section 7 of H.R. 618. The Committee believes that the Commission and the bank regulatory agencies share Treasury's concerns regarding the continued liquidity and efficiency of the market and have established an excellent record of carrying out consultation and coordination requirements established in other federal laws.

A consultative process is included in this section to ensure that Treasury's views are requested and considered before any sales practice rules adopted by the NASD are approved by the Commission and that views of both Treasury and the Commission are considered before any sales practice rules proposed by the appropriate regulatory agencies for insured depository institutions are adopted. The consultative process will enable Treasury to use its knowledge of the market to assure that any sales practice rules would not impair the liquidity and efficiency of the market or increase the cost of financing the public debt. It will also allow the Commission to assure that standards for participants in the government securities market are not inconsistent with standards of conduct applicable to sales or other securities or with other applicable provisions of the federal securities laws, including the general antifraud provisions. In their consultative roles, Treasury and the Commission are expected to foster coordinated regulation and to identify and urge the elimination of disparities in the adoption or application of sales practice regulation by the appropriate regulatory agencies, consistent with the statutory requirement that rules adopted under section 15C of the Exchange Act should be designed in a manner that does not permit unfair discrimination among different classes of government securities brokers and dealers or their customers.

6. COMMISSION ANTIFRAUD AND ANTIMANIPULATION AUTHORITY

Section 5 of the bill provides the Commission clear antifraud and antimanipulation rulemaking authority for all government securities brokers and dealers, including those that are financial institutions. This authority complements the Commission's current antifraud and antimanipulation authority over all securities transactions by any person, which is set forth in Section 10(b) of the Exchange Act and Section 17(a) of the Securities Act of 1933.

Extending the Commission's current authority under Sections 15(c)(1) and (2) of the Exchange Act to all government securities brokers and dealers and all transactions by government securities brokers and dealers in government securities would permit the Commission to adopt prophylactic antifraud and antimanipulation rules applicable to all market professionals without invoking its authority under Section 10(b) of the Exchange Act. This will allow the Commission to "prescribe means reasonably designed to prevent fraudulent and manipulative practices" by government securities brokers and dealers. This approach to policing fraud and manipula-

tion by market professionals allows the Commission to establish specific standards of conduct for market professionals without addressing the issue of whether a failure to meet such requirements in and of itself would constitute fraud, deception, or manipulation.

The Committee anticipates that this authority may not need to be used extensively. Since Congress extended the Commission's authority under these Sections to municipal securities and bank municipal securities dealers in the Securities Acts Amendments of 1975, the Commission has utilized this authority as its principal authority for action only twice. As contemplated in the legislative history of the 1975 Amendments, in 1976, the Commission amended Rules 15c1–1 through 15c1–8, which apply to transactions by all brokers and dealers, to extend their application to bank municipal securities dealers, and it extended Rule 15c2–4 to municipal securities transactions by all municipal securities brokers and dealers. In 1990, in response to the default of the Washington Public Power Supply System, the Commission adopted Rule 15c2–12, which requires underwriters of municipal securities to obtain and disseminate information about the securities they underwrite.

In implementing these amendments, the Committee does not expect that the Commission will extend any of the rules that previously have been adopted under Section 15(c)(2) to government securities transactions unless, after consultation with the Secretary and each appropriate regulatory agency, it determines that such rules are appropriate to address the potential for fraud and manipulation in the government securities market. Similarly, it is the Committee's intention that the bank regulators and the SROs undertake, in the first instance, the primary development of rules for the prevention of sales practice abuses in the government securities market. Accordingly, the Committee would not expect the Commission to act in this area unless it sees a need for prompt or comprehensive action.

The Committee believes that this authority will allow the Commission to act to address threats to the integrity of the government securities market. Like the amendments in Section 3 of the bill, the amendments to the broker-dealer antifraud and antimanipulation provisions of Section 15(c)(1) and (2) contained in Section 5 of the bill would extend the Commission's authority under those paragraphs to all government securities brokers and government securities dealers, including banks.

The Committee believes that it is important to have uniform antimanipulation rules applicable to all government securities brokers and dealers, in order to avoid loopholes that create trading advantages for one class of professional market participants or regulatory discrepancies that can be exploited in furtherance of unlawful schemes. Fraud and manipulation can be perpetrated in the government securities market by every type of broker and dealer. Although it may be appropriate in some cases to tailor specific rules to practices of identifiable groups of brokers or dealers, the overarching principles of market integrity that are embodied in the antifraud and antimanipulation provisions should apply to all brokers and dealers in the government securities markets.

In applying statutory provisions as fundamental as the antifraud provisions of the Federal securities laws, a comprehensive and uni-

form approach is necessary to avoid the risk of a patchwork of provisions, each applicable to only certain market participants. This, together with the experience gained by the Commission over many years in developing the case law under the antifraud provisions, through its enforcement and amicus curiae programs, as well as in prescribing antifraud rules for all persons of various types (including banks) operating in various markets, justifies the continued primacy of the Commission in developing prophylactic antifraud and antimanipulation rules applicable to all government securities brokers and dealers, including bank dealers. However, in recognition of the regulatory and enforcement authority of the bank regulators over bank dealers, the Commission must consult with and respond in writing to any written comments of the bank regulators and Treasury when promulgating antifraud and antimanipulation rules under this new authority.

HEARINGS

On March 17, 1993, the Committee's Subcommittee on Telecommunications and Finance held a legislative hearing on H.R. 618, which heard testimony from Securities and Exchange Commission Chairman Richard C. Breeden; Federal Reserve System Board of Governors Vice Chairman David W. Mullins, Jr.; Federal Reserve Bank of New York Executive Vice President William J. McDonough; Managing Director of Smith Barney (Former Deputy Assistant Secretary of Treasury for Federal Finance) Michael E. Basham; and President of Top Gun Capital Management Randy M. Strausberg.

During the 102nd Congress, the Subcommittee held several oversight and legislative hearings on problems in the government securities market and necessary legislative and regulatory reforms.

On May 9, 1991, the Committee's Subcommittee on Telecommunications and Finance held an oversight hearing on changes in the government securities market in recent years and the need to reflect such changes in reauthorization of the GSA, which heard testimony from Government Finance Officers Association Committee on Cash Management Vice Chair, John J. Bilafer; ITT Sheraton Corporation Senior Vice President Robert A. Bowman; State of West Virginia Senior Deputy Attorney General Thomas J. Gillooly; National Association of Securities Dealers President Joseph Hardiman; former State of Arkansas Assistant Securities Commissioner Nancy J. Jones; Public Securities Association Committee Co-Chairman Ronald G. Keenan; and, State of West Virginia Attorney General Mario J. Palumbo.

On September 4, 1991, the Subcommittee held an oversight hearing on disclosures made by Salomon Brothers of possible illegal activity in certain Treasury auctions and the government securities market by Salomon Brothers employees, which heard testimony from Securities and Exchange Commission Chairman Richard C. Breeden; Salomon Brothers, Inc. Chairman Warren E. Buffett, Federal Reserve Bank of New York President Gerald E. Corrigan; Federal Reserve System Board of Governors Vice Chairman David W. Mullins, Jr.; Salomon Brothers, Inc. Counsel Lawrence Pedowitz; and Assistant Secretary of Treasury for Domestic Finance Jerome H. Powell.

The Subcommittee held two days of hearings on H.R. 3927 (predecessor legislation to H.R. 618) and the related Committee Print. Testimony was received from 11 witnesses, representing 11 organizations, with additional material submitted by 17 individuals and organizations.

On October 25, 1991, the Subcommittee received testimony from Securities and Exchange Commission Chairman Richard C. Breeden; National Association of Securities Dealers President Joseph Hardiman; Federal Reserve System Board of Governors Vice Chairman David W. Mullins, Jr.; and Assistant Secretary of Treasury for Domestic Finance Jerome H. Powell.

At the hearing on February 19, 1992, the Subcommittee heard testimony from Investment Company Institute President Matthew P. Fink; Public Securities Association Board of Directors Member Bruce Lakefield; Cantor Fitzgerald Securities Corporation President Howard W. Lutnick; Fidelity Investments General Counsel Robert C. Pozen; GOVPX Chairman Kenneth M. Deregt; and State Universities Retirement System of Illinois Executive Director Dennis D. Spice, testifying on behalf of the Council of Institutional Investors.

Committee Consideration

On July 22, 1993, the Subcommittee on Telecommunications and Finance met in open session and ordered reported the bill H.R. 618, by a voice vote, a quorum being present. On September 14, 1993, the Committee met in open session and ordered reported the bill H.R. 618, as amended, by voice vote, a quorum being present.

Committee Oversight Findings

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee held two oversight hearings and made findings that are reflected in the legislative report.

Committee on Government Operations

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

Committee Cost Estimate

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the costs incurred for the federal government in carrying out H.R. 618 over the period 1994–1998 would be approximately $3 million from appropriated funds and approximately $4 million reflected as a reduction in federal revenues from increased personnel costs of the Federal Reserve. However, these costs would be offset, and are necessary to maintain the liquidity, efficiency, and safety of the government securities market.

For example, H.R. 618 contemplates that the Commission will promulgate new rules and review several NASD rules. H.R. 618 also would enhance the Commission's authority over government securities markets. It is estimated that conducting the rulemakings

and establishing the systems to handle the other requirements of the bill would cost the Commission approximately $500,000 to $600,000 in each of the first two years, and that market surveillance activities, consultation with other agencies, and information handling would cost approximately $300,000 a year over the 1996–1998 period. However, this cost is more than offset by fees collected by the Commission and contributed to the Treasury. The Committee observes that the Commission collected $406 million in fee revenue in 1992, 180 percent of its funding. Estimated fee collections of $440 million are expected in 1993 and $582 million in 1994, equivalent, respectively, to 174 percent and 228 percent of the agency's budget.

The Federal Reserve remits its surplus to the Treasury, with the payment recorded in the budget as a governmental receipt. Therefore, additional operating costs to the Federal Reserve resulting from enactment of the bill would reduce revenues. Based on information provided by the Federal Reserve, we estimate that the Federal Reserve would incur additional costs of less than $1 million per year over the 1994 to 1998 period, reducing revenues by that amount.

H.R. 618 would grant the Treasury Department the authority to require persons holding, maintaining, or controlling large positions in to-be-issued or recently issued Treasury securities to file reports regarding their positions with the Federal Reserve Bank of New York. Formulating the necessary rules would cost approximately $200,000, primarily for personnel costs.

The public debt of the United States amounted to $4,403 billion on August 31, 1993, including $2,579 billion of marketable securities held by private investors. In fiscal year 1992, Treasury sold over $1.9 trillion of marketable Treasury securities. Daily trading volume in Treasury securities by primary dealers, excluding financing transactions, averaged $126 billion per day in August 1993, according to data reported to the FRBNY. The liquidity, efficiency, and safety of the Treasury securities secondary market result directly from the creditworthiness of the issuer, the volume of securities issued, the large number and diversity of participants, the financial strength and integrity of those participants, and the continual willingness of brokers and dealers to participate actively in the markets. The costs incurred to carry out this legislation are dwarfed by the size and global importance of this market, and the vital need to enact these authorities to maintain its liquidity, efficiency, and safety.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 23, 1993.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R 618, the Government Securities Reform Act of 1993. Because enactment of H.R. 618 would

affect direct spending and receipts, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 618.

2. Bill title: The Government Securities Reform Act of 1993.

3. Bill status: Ordered reported by the House Committee on Energy and Commerce on September 14, 1993.

4. Bill purpose: H.R. 618 would permanently extend the Treasury Department's rulemaking authority over capital adequacy, bookkeeping, and recordkeeping for government securities dealers. the bill also would:

Give the Securities and Exchange Commission (SEC) authority to require government securities brokers and dealers to furnish records of government securities transactions to the SEC;

Authorize the Treasury Department to require those persons holding large positions in particular to-be-issued or recently issued government securities to report their holdings;

Direct brokers and dealers in government securities to establish written policies designed to prevent fraud and manipulation, and direct the regulatory agencies to prescribe rules governing such policies;

Authorize the various regulators of brokers and dealers of government securities to prescribe rules regarding sales practices, and permit the National Association of Securities Dealers (NASD) to write rules governing fair practices in government securities markets; and

Require several studies by various government agencies.

5. Estimated cost to the Federal Government: Based on information from the SEC, the Federal Reserve Board, the Department of the Treasury, the Federal Deposit Insurance Corporation (FDIC), and the General Accounting Office (GAO), CBO estimates that implementing the provisions of H.R. 618 would cost the federal government approximately $7 million over the 1994–1998 period. Of this amount, $3 million would come from appropriated funds and $4 million would be reflected as a reduction in federal revenues caused by increased operating costs of the Federal Reserve. The costs of this bill fall in budget functions 370 and 800.

Basis of Estimate: CBO assumes that H.R. 618 would be enacted by December 1, 1993, and that all necessary amounts will be appropriated for each fiscal year.

SEC: H.R. 618 would require the SEC to conduct several rulemaking procedures and would permit the SEC to conduct several others. It also would enhance the SEC's authority over government securities markets. CBO estimates that conducting rulemakings and establishing systems to handle the other requirements of the bill would cost the SEC $500,000 to $600,000 in each of the first two years. Market surveillance activities, consultation with other

agencies, and information handling would cost approximately $300,000 a year over the 1996–1998 period.

Treasury Department: H.R. 618 would grant the Treasury Department the authority to require persons holding, maintaining, or controlling large positions in to-be-issued or recently issued Treasury securities to file reports regarding their positions with the Federal Reserve Bank of New York. Formulating the necessary rules would cost approximately $200,000, primarily for personnel costs.

Federal Reserve: CBO estimates that H.R. 618 would reduce federal revenues because it would increase the operating costs of the Federal Reserve System. (The Federal Reserve remits its surplus to the Treasury, with the payment recorded in the budget as a governmental receipt.)

The bill would impose a number of additional responsibilities on the Federal Reserve. It would expand the Federal Reserve's role in supervising primary securities dealers and monitoring certain large holders of Treasury securities. The bill would permit the SEC to request information on specific trading activity from dealers and require that it be transmitted to either the Federal Reserve, the appropriate regulatory agency, or the SEC. The Federal Reserve would also monitor dealer compliance with the bill's new safeguards against fraud. In addition, H.R. 618 would authorize the Treasury Department to require holders of large positions in a particular Treasury issue to file reports with the Federal Reserve. Based on information provided by the Federal Reserve, we estimate that the agency would incur additional costs of less than $1 million per year over the period from 1994 to 1998, reducing revenues by that amount.

Other Agencies: Several types of financial institutions act as government securities brokers or dealers. H.R. 618 would permit the regulatory agency associated with each type of financial institution to prescribe rules to prevent fraudulent and manipulative practices in the government securities market. In the case of the FDIC, the increase in direct spending would be negligible. Both the Office of Thrift Supervision (OTS) and the Comptroller of the Currency (OCC) would offset their increased costs, though small, with an increase in fees charged to the institutions they regulate, so their net direct spending impact would be zero.

The bill also would require the GAO to perform a study evaluating the overall effectiveness of SEC regulation of the government securities market. CBO estimates that such a study would cost from $250,000 to $500,000 during the 1996–1997 period.

Other Possible Effects: H.R. 618 could have some effect on the federal government's net cost of borrowing. If the bill encourages broader participation by increasing investors' confidence in the government securities market, the bill might result in some savings. On the other hand, the bill might only increase recordkeeping costs to current securities dealers, which would be passed on to the federal government in the form of slightly higher costs.

6. Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 618 would affect both direct

spending and receipts. Therefore, pay-as-you-go procedures would apply to this bill.

The bill would affect receipts because it would authorize or require the Federal Reserve to perform various activities, increasing the operating costs of the Federal Reserve System. H.R. 618 would affect direct spending because it would authorize the FDIC, OTS, and OCC to prescribe rules to prevent fraudulent and manipulative practices in the government securities market. Any net change in direct spending would be negligible.

The following table summarizes the estimated pay-as-you-go impact of H.R. 618:

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998
Estimated receipts	−1	−1	−1	−1	−1
Estimated outlays	0	0	0	0	0

7. Estimated cost to State and local governments: None.
8. Estimate comparison: None.
9. Previous CBO estimate: None.
10. Estimate prepared by: John Webb, James Hearn, Mary Maginniss, Mickey Buhl, and Mark Booth.
11. Estimate approved by: Paul Van de Water, for C.G. Nuckols, Assistant Director for Budget Analysis.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: H.R. 618 will have no inflationary impact.

Section-by-Section Analysis

SECTION 1—SHORT TITLE

The Act is entitled the "Government Securities Reform Act of 1993."

SECTION 2—EXTENSION OF GOVERNMENT SECURITIES RULEMAKING AUTHORITY

This section eliminates the sunset date of October 1, 1991 of Treasury's rulemaking authorities under the GSA, and thereby permanently extends to the Secretary rulemaking authorities pursuant to Section 15C(b) of the Exchange Act, as well as the new authority granted to Treasury under Section 4 of this Act.

SECTION 3—RECORDKEEPING

The section amends Section 15C(d) of the Exchange Act to add a new paragraph (3). The paragraph requires all government securities brokers and dealers to furnish to the Commission on request such records of government securities transactions, including records of the date and time of execution of trades, as the Commission may require to reconstruct trading in the course of a particular inquiry or investigation being conducted by the Commission. The Commission may direct that information be reported to it or

to any other appropriate regulatory agency, the Federal Reserve Bank of New York, or any SRO. It may require that the information be reported in machine readable form. As provided in Subparagraph (B), the Commission may not use its authority under this paragraph to develop regular reporting requirements for information concerning a substantial segment of all daily transactions in government securities, but may require information, without limitation as to frequency, for particular inquiries or investigations being conducted pursuant to its enforcement and surveillance responsibilities under the federal securities laws. The paragraph does not authorize the Commission to require information that is not obtained or maintained in accordance with other provisions of law or usual and customary business practice. The Committee intends that any request under this paragraph for information from an insured depository institution be authorized by the full Commission, the director of any division of the Commission, or the administrator of any regional office. The Commission is directed to avoid, where feasible, requiring any information to be furnished under this paragraph that may be obtained from the Federal Reserve Bank of New York. These limitations do not apply to the exercise of existing Commission authority under other provisions of the federal securities laws, and should not interfere with the purposes of the paragraph, including extending to bank government securities brokers and dealers the Commission's current ability to obtain trading information from registered brokers and dealers without a subpoena.

The Committee expects that the categories of information required to be furnished would include the same types of information that may be required in connection with other types of securities transactions. Naturally, the specific information required may very depending on the type of security and the type of transaction. In general, the categories might include items such as the CUSIP number or other identifier; security coupon; quantity; price; yield; identity of broker-dealer maintaining the record; the buy-sell indication for such broker-dealer; the identity of the counterparty; the buy-sell indication of the counterparty; the time of execution and/or receipt; the terms and conditions of the order; the account for which the order was entered; the firm's capacity; and the mark-up or commission charged.[88]

With respect to the requirement that firms provide records in machine readable form on request for the purpose of reconstructing market trades, the Committee believes that the means by which such information is transmitted may vary among firms. For example, it may not be feasible to require all firms to establish a direct electronic link to the recipient of the records.[89] The Committee expects that the Commission would work with firms to establish the most efficient means of transmission, taking into account the costs to firms and the differing levels of technology among government securities brokers and dealers.

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[88] This description is not intended to limit in any way the recordkeeping authority of the Commission or SROs under Section 17(a) of the Exchange Act or other applicable provisions or the recordkeeping authority of Treasury under Section 15C.

[89] The Commission may, for example, develop software applications using personal computers to assist smaller firms in reporting.

Subparagraph (C) provides that at the time the Commission requests any information with respect to a government securities broker or dealer for which the Commission is not the appropriate regulatory agency, the Commission shall notify the appropriate regulatory agency for such broker or dealer and, upon request, furnish to the appropriate regulatory agency any information supplied to the Commission.

Subparagraph (D) provides that within 90 days of the date of enactment of this Act, and annually thereafter, or upon the request of any other appropriate regulatory agency, the Commission shall consult with the other appropriate regulatory agencies to determine the availability of records that may be required to be furnished under this paragraph, and, for those records available directly from the appropriate regulatory agencies, develop a procedure for furnishing such records expeditiously upon the Commission's request.

Subparagraph (E) provides that nothing in this paragraph shall be construed to permit the Commission to require any government securities broker or dealer to obtain, maintain, or furnish any examination report of any appropriate regulatory agency other than the Commission or any supervisory recommendations or analysis contained in any such examination report. It is the Committee's understanding that such reports are highly unlikely to contain the types of records of transactions in government securities that would be required by the Commission to reconstruct trading for particular surveillance or enforcement inquiries or investigations.

Subparagraph (F) provides that the Commission and the appropriate regulatory agencies shall not be compelled to disclose publicly any information required under the paragraph for which disclosure might otherwise be required pursuant to the Freedom of Information Act, 5 U.S.C. 552, or any other laws. However, the Commission and appropriate regulatory agencies are not authorized to withhold information from Congress, or prevented from providing information to any federal department or agency requesting the information for purposes within the scope of its jurisdiction, or from complying with an order of a court of the United States in an action brought by the United States, the Commission, or the appropriate regulatory agency.

Although Sections 3 and 4 of this Act contemplate that the Federal Reserve Bank of New York will receive reports and other information from certain government securities brokers and dealers, it is not a named entity in the disclosure provisions of the Act. Explicit reference is not necessary given that Federal Reserve banks are not generally subject to federal disclosure laws, such as the Freedom of Information Act, in their individual capacities.

SECTION 4—LARGE POSITION REPORTING

Section 4 of the bill amends Section 15C of the Exchange Act to add a new subsection (f). Paragraph (1) of this subsection grants to the Secretary the authority to prescribe rules to require persons holding, maintaining or controlling large positions in to-be-issued or recently-issued Treasury securities to file such reports regarding such large positions.

The reports filed are to be those the Secretary determines to be necessary or appropriate for the purpose of monitoring the impact in the Treasury securities market of concentrations of positions in Treasury securities and for the purpose of otherwise assisting the Commission in the enforcement of the Exchange Act. Reports are to be filed with the Federal Reserve Bank of New York, acting as agent for the Secretary. Such reports are to be provided to the Commission on a timely basis. Large position information received by the Secretary, as well as other information received by the Secretary, an appropriate regulatory agency, or the Commission is permitted to be made available to the Secretary, the Justice Department, the Commodity Futures Trading Commission, the appropriate regulatory agencies, SROs, and any Federal Reserve Bank.

The Committee emphasizes that holding a large position does not create a presumption of manipulative or other illegal intent. The reporting requirement established by this section is intended to provide regulators with information necessary or appropriate for market surveillance and enforcement purposes. The Committee expects the Secretary to take into account the costs and burdens of the reporting requirement to the investor and its shareholders or beneficial owners as well as the impact on the efficiency and liquidity of the Treasury market. The Committee also expects that in prescribing such rules, the Secretary will consider the views of, and consult with, the Commission, the Federal Reserve Board, and the Federal Reserve Bank of New York.

Paragraph (2) provides that the rules of the Secretary may establish recordkeeping requirements for holders of large positions to ensure that such persons can comply with the reporting requirements.

Paragraph (3) provides that the Secretary may establish aggregation requirements and define which persons (individual or as a group) are holders of large positions.

Paragraph (4) provides that the Secretary may define terms used in the subsection that are not defined in Section 3 of the Exchange Act. It also provides that the Treasury rules shall specify the minimum size of positions to be reported taking into account the purposes of the subsection and the potential for price distortions or other anomalies resulting from large positions. In addition, the Secretary must specify the types of positions to be reported (including financing arrangements), the securities for which reports are required, and the form and manner in which reports may be transmitted (which may include machine-readable form).

Paragraph (5) provides that the Commission and the appropriate regulatory agencies shall not be compelled to disclose publicly any information required under the subsection for which disclosure might otherwise be required pursuant to the Freedom of Information Act, 5 U.S.C. 552, or any other laws. However, the Commission and appropriate regulatory agencies are not authorized to withhold information from Congress, or prevented from providing information to any federal department or agency requesting the information for purposes within the scope of its jurisdiction, or from complying with an order of a court of the United States in an action brought by the United States, the Commission, or the appropriate regulatory agency.

SECTION 5—PREVENTION OF FRAUDULENT AND MANIPULATIVE ACTS AND PRACTICES

Section 5 extends the Commission's current authority under Sections 15(c) (1) and (2) of the Exchange Act to all government securities brokers and dealers and to all transactions in government securities. This grant of authority will enable the Commission to prescribe rules to prevent fraudulent, deceptive, or manipulative acts or practices by government securities brokers or dealers, or the use of any fictitious quotations in the government securities market.

The section amends Section 15(c)(2) of the Exchange Act to extend the Commission's current authority to prescribe rules reasonably designed to prevent fraudulent and manipulative practices by broker-dealers to government securities brokers and dealers and to government securities transactions. These changes would ensure that the Commission's authority under Section 15(c) to adopt prophylactic antifraud and antimanipulation rules will apply to all market professionals and all markets.

The section also amends Section 15(c)(1) of the Exchange Act to extend the Commission's current authority to define fraudulent and manipulative practices by broker-dealers to include all government securities brokers and dealers.

The section requires the Commission to consult with and consider the view of the Secretary and the appropriate regulatory agencies prior to adopting rules under the new authority conferred by the amendments to these Sections of the Exchange Act. The Commission must respond in writing to any written comments submitted by the Treasury or appropriate regulatory agency to a proposed rule under this section.

SECTION 6—BROKER-DEALER SUPERVISION RESPONSIBILITIES

Section 6 requires every government securities broker and dealer to establish mandatory internal policies and procedures reasonably designed, taking into consideration the nature of such person's business, to detect and prevent, insofar as practicable, in connection with the purchase and sale of government securities, fraud and manipulation in violation of the Exchange Act and the rules thereunder. In addition, this provision would permit the appropriate regulatory agency for such government securities broker and dealer, in its discretion, by rule to require that internal procedures also be designed to prevent violations of other provisions of the Exchange Act (and the rules and regulations thereunder). This provision draws upon existing requirements concerning the defense to a failure to supervise case under Section 15(b)(4)(E) and related provisions of the Exchange Act. As in Section 15(f) of the Exchange Act, the rulemaking authority is being granted to permit rules and regulations to be prescribed as deemed necessary to require specific policies or procedures reasonably designed to prevent such violations.

In adopting Section 6, the Committee does not intend to create, explicitly or implicitly, a private right of action with respect to these supervision responsibilities.

SECTION 7—SALES PRACTICE RULEMAKING AUTHORITY

Section 7 amends Section 15C(b) of the Exchange Act to explicitly authorize the appropriate regulatory agencies to prescribe rules applicable to the financial institutions they supervise to prevent fraudulent and manipulative practices and promote just and equitable principles of trade. Those agencies would be required to consult with one another for the purpose of ensuring consistency of the rules. They would also be required to consult with and consider the views of the Secretary and the Commission with respect to the impact of the rules on the operations of the market for government securities, consistency with analogous rules for SROs, and the enforcement and administration of such rules.

Section 7 also removes all current limitations on the ability of the NASD to regulate its members' transactions in exempted securities other than municipal securities. Thus, in addition to applying sales practice requirements and just and equitable principles of trade to government securities transactions, the NASD would be authorized to establish qualification testing requirements for associated persons of government securities dealers and financial responsibility standards such as fidelity bonding and maintenance margin requirements. Section 7 also amends Section 19(b) of the Exchange Act, which concerns approval of SRO proposed rule changes, to require the Commission to consult with and consider the views of the Secretary prior to approving a proposed rule change that primarily concerns government securities. Similar consultation requirements would be added to Section 19(c) of the Exchange Act, which authorizes the Commission to act by rule to amend the rules of a self-regulatory organization. In addition, the Commission's authority to prescribe qualification testing requirements under Section 15(b)(7) of the Exchange Act, which is currently applicable to all registered broker-dealers, would be extended to non-financial institution government securities brokers and dealers registered under Section 15C(a)(1)(A) of the Exchange Act.

SECTION 8—MARKET INFORMATION

Section 8 amends Section 23(b)(4) of the Exchange Act to add government securities market transparency to the list of subjects on which the Commission is required to report to the Congress annually. The Commission is directed to report on the steps taken and the progress that has been made in promoting the timely public dissemination and availability for analytical purposes of specified information concerning government securities transactions and quotations. In particular, the Commission is directed to monitor and to submit its recommendations, if any, for legislation to assure timely dissemination of: (1) information on transactions in regularly traded government securities sufficient to permit the determination of the prevailing market price for such securities; and, (2) reports of the highest published bids and lowest published offers for government securities (including the size at which persons are willing to trade with respect to such bids and offers). The Commission is specifically directed to monitor whether this information is available on a fair, reasonable, and nondiscriminatory basis.

SECTION 9—STUDY OF REGULATORY SYSTEM FOR GOVERNMENT SECURITIES

Section 9 mandates three studies of the government securities market. The first is a joint study by the Commission, the Secretary, and the Federal Reserve on the effectiveness of the regulation of the government securities market, including any new rules adopted under the authorities granted in this Act, as well as any new rules adopted by the Secretary under the authorities granted to it under Section 15C of the Exchange Act. In addition, the joint study is required to evaluate the effectiveness of surveillance and enforcement with respect to government securities. The joint study is to be submitted to Congress no later than March 31, 1998.

The second study is to be conducted by the General Accounting Office, which is commissioned to conduct a study of the overall effectiveness of the regulation of government securities brokers and dealers, and to submit a report to Congress with its findings and recommendations no later than March 31, 1997. The Committee expects the General Accounting Office study will include an examination of the effectiveness of the amendments made by this Act, and on other key issues, including, the effectiveness of surveillance and enforcement with respect to transactions in government securities, the nature and adequacy of public access to government securities market quotation and transaction information, the impact of the lack of a full audit trail on the ability of the Commission and the self-regulatory organizations to conduct market surveillance and enforce compliance with the federal securities laws, and any recommendations the General Accounting Office considers appropriate.

The third study will be conducted by the Secretary, in consultation with the Commission, and shall be submitted to Congress not later than 18 months after the date of enactment of this Act. This study shall focus on the identity and nature of the business of government securities brokers and government securities dealers that are registered with the Commission under section 15C of the Exchange Act, and the continuing need for, and regulatory and financial consequences of, a separate regulatory system for such government securities brokers and dealers.

SECTION 10—TECHNICAL AMENDMENTS

Subsection (a) clarifies and updates definitions under the securities laws of the terms "appropriate regulatory agency" and "financial institution."

Subsection (b) clarifies that the effective date of broker-dealer registration is the date upon which the broker-dealer becomes a member of a national securities exchange or a registered securities association.

Subsection (c) provides for expanded information sharing among specified government entities.

SECTION 11—OFFERINGS OF CERTAIN GOVERNMENT SECURITIES

Section 11 amends Section 15(c) of the Exchange Act to explicitly provide that, in connection with any bid for or purchase of a government security related to an offering of government securities by

or on behalf of an issuer, no government securities broker or dealer, or bidder for or purchaser of securities in such offering, shall knowingly and willfully make any false or misleading statement or omit any fact necessary to make any written statement made not misleading.

SECTION 12—RULE OF CONSTRUCTION

Section 12 makes clear that nothing in the Act may be construed to govern the initial issuance of any public debt obligation or to grant to the Commission, any appropriate regulatory organization, or self-regulatory organization, any authority to prescribe any procedure, term, or condition of such issuance, promulgate any rule or regulation governing such issuance, or otherwise regulate in any manner such initial issuance by the government of the United States. The Committee on Ways and Means has legislative jurisdiction over the bonded debt of the United States pursuant to clause 1(v)(5), rule X of the Rules of the U.S. House of Representatives, which authority includes jurisdiction over the issuance of Federal debt obligations and the process by which such obligations are issued by the Treasury.

The Committee on Ways and Means' Subcommittee on Oversight issued an oversight report on reforms to prevent violations in the marketing of government securities. That oversight report (WMCP: 102–38 Report No. 7 March 12, 1992) recommended, on the basis of that Subcommittee's September 26, 1991 and February 3, 1992 hearings, that the Committee on Ways and Means "enact legislation to make it an explicit violation of the law to make false or misleading written statements to an issuer of government securities in connection with the primary issuance of such securities'" (at 7). This Committee fully concurs with this recommendation from the Ways and Means' Subcommittee, which is reflected in Section 11 of this Act. The Committees have agreed to work cooperatively on a Floor Amendment to H.R. 618 to effectuate technical changes to Sections 11 and 12 consistent with the intent of the Committees as to the operation of Section 11, and to add certain reporting requirements consistent with other recommendations of the Subcommittee. A letter from the Chairman of the Committee on Ways and Means confirming this agreement follows:

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 23, 1993.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, Rayburn House Office Building, Washington, DC.

DEAR JOHN: During the 102d Congress, on June 24, 1992, the Committee on Ways and Means approved an amendment which we asked to have included in H.R. 3927, the Government Securities Reform Act, a bill which had been ordered reported by your Committee.

That amendment would have made it an explicit violation of the law to make false or misleading written statements to an issuer of Government securities in connection with the primary issuance of such securities, and would have required certain reports by Treas-

ury concerning its public debt operations and changes in the Treasury debt auction process.

It is my understanding that H.R. 618, recently ordered reported by your Committee, represents the successor legislation to H.R. 3927 for the 103d Congress. The amendment approved previously by the Committee on Ways and Means continues to be relevant to H.R. 618. It is also my understanding that you may ask to place H.R. 618 on the suspension calendar when it is reported from your Committee. I would respectfully request that the amendment approved by the Committee on Ways and Means and the provisions of your bill be merged, and that the new bill be placed on the suspension calendar.

I look forward to working with you on these and other matters of mutual interest.

Sincerely,

DAN ROSTENKOWSKI, *Chairman.*

Although Section 12 refers only to public debt obligations, it should not be inferred that the Act governs the initial issuance of other government securities. The provisions of the Exchange Act amended by the Act are not intended to limit, constrain, or regulate the activities of issuers of government securities (as defined in Section 3 of the Exchange Act) in connection with the issuance of such securities. In contrast, the provision clearly contemplates the application of securities regulations, such as the qualification, recordkeeping, reporting, capital, and antifraud provisions, to persons participating in the initial issuance of such securities, so long as the requirements imposed by such regulations with respect to initial issuance are consistent with the requirements with respect to transactions in the secondary market.

AGENCY VIEWS

DEPARTMENT OF THE TREASURY,
Washington, August 4, 1993.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In connection with the markup of H.R. 618 by the Committee on Energy and Commerce, we would like to present the Treasury's comments on this proposed legislation.

We appreciate the opportunity we have had to participate in the discussions that have resulted in the amendment in the nature of a substitute to H.R. 618 that we understand will be marked up by the committee. The spirit of cooperation which your committee, especially Chairman Markey, and your staffs, along with the House Committee on Banking, Finance and Urban Affairs, have demonstrated on this issue has materially improved the prospects for passage of constructive government securities legislation.

The amendment in the nature of a substitute to H.R. 618 represents important progress. The Treasury supports the amendment as a way of improving the effectiveness of regulation and surveillance of the government securities market without imposing undue and burdensome regulatory requirements on a market which is es-

sential to the efficient and cost-effective financing of the U.S. government.

The Treasury considers the provision in the amendment for permanent reauthorization of the Treasury's Government Securities Act ("GSA") rulemaking authority to be highly appropriate. This eliminates the risk that there will be another lapse in rulemaking authority, such as the one that has prevailed since October 1, 1991, which has made it impossible for Treasury to respond to developments in the government securities market with its GSA rulemaking authority.

The Treasury supports the authority for large position reporting. In contrast to previous versions of this bill, the Treasury could compel large position reporting for government securities brokers and dealers and customers without making a formal finding that, in effect, market conditions in a particular instance had deteriorated to such an extent that customer position information was necessary for the government to perform its surveillance functions effectively. If this provision is enacted into law, the Treasury plans to be judicious and careful in using this authority. However, the change concerning customer reporting is well justified since it recognizes the reality that large positions in government securities are not confined to government securities brokers and dealers.

The Treasury is pleased with the revision to the section pertaining to broker/dealer supervision responsibilities. As revised, government securities brokers and dealers would be required to establish and maintain policies and procedures to prevent and detect violations of the Securities Exchange Act of 1934 and rules and regulations thereunder. The appropriate regulatory agencies would have the responsibility for enforcing this requirement.

The provisions lifting all restrictions on rulemaking by the National Association of Securities Dealers with respect to transactions in government securities and granting sales practice rulemaking authority to the appropriate regulatory agencies for financial institution government securities brokers and dealers are appropriate for this market. The Treasury believes that the strong consultation requirements in this section, combined with a history of effective cooperation among the Treasury, the SEC, and the financial institute regulators, should be workable.

The deletion from earlier versions of the legislation of a provision granting the SEC authority to write regulations concerning market transparency in the government securities market is an appropriate recognition of the progress that the private sector has achieved in this area. The requirement that the SEC report annually on government securities market transparency will both provide Congress with information on this subject and will serve to indicate to market participants the Federal Governments' strong interest in assuring public access to market information.

The Treasury is concerned that the "Rule of Construction" provision may have the unintended consequence of possibly precluding the application of various provisions of H.R. 618 to the initial issuance of public debt securities. We understand the reason for this provision and will have specific comments concerning it as the legislative process moves forward in the House of Representatives.

With respect to the section concerning transaction records in the substitute version of H.R. 618, it recognizes that, upon reauthorization, the Treasury will have the authority to make rules in this area for all government securities brokers and dealers, including those that are financial institutions. It also recognizes the SEC's need to have easier access to such records in connection with particular surveillance inquiries or enforcement investigations.

Finally, the Treasury does not object to the provision granting the SEC the authority to issue rules designed to prevent fraudulent and manipulative acts and practices for all government securities brokers and dealers.

Again, I would like to repeat my appreciation for the constructive spirit in which your committee has approached this much needed legislation. This has been critical to the substantial progress that has been made in building consensus concerning several controversial areas that have eluded agreement in the past.

We look forward to working with you and other members of Congress as the legislative process to reauthorize the Treasury's GSA rulemaking authority progresses.

Sincerely,

FRANK N. NEWMAN,
Under Secretary of the Treasury,
Domestic Finance.

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, September 13, 1993.

Re Government Securities Reform Act of 1993.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR JOHN: I write to inform you of the Commission's support for the amendment in the nature of a substitute for H.R. 618, the Government Securities Reform Act of 1993. The Commission wishes to thank the members and staff of the committee for their perseverance and leadership in forging an effective government securities bill. The Commission is pleased to have been a part of such a cooperative effort.

While the Commission's positions on most of the provisions of the Bill are set out in detail in our testimony before the Subcommittee on Telecommunications and Finance and various other committees, it may be helpful to clarify our views regarding the issues of transparency, large position reporting, and transaction recordkeeping and reporting, each of which has been refined since we last testified.

TRANSPARENCY

H.R. 618 directs the Commission to monitor the transparency of the government securities market, report annually on steps taken to improve it, and recommend any necessary legislation. The Commission is a strong advocate for the benefits of transparency and has acknowledged the ongoing efforts by the private sector to improve the level of transparency in this market in response to con-

cerns raised by the Commission. By providing for an annual report on government securities market transparency, the new provision allows the Commission to continue its efforts to improve transparency in this market by promoting private sector initiatives while facilitating congressional oversight of developments that contribute to increased transparency as well as those areas where improvement is still needed.

LARGE POSITION REPORTING

H.R. 618 also grants Treasury the authority to write rules requiring reporting of large positions to the Federal Reserve Bank of New York by any investor. The Commission supports the elimination of the provision that would have required Treasury to make a finding of a market problem before requiring non-government securities broker-dealers to provide such reports. Because large positions in government securities can be established in the when-issued trading markets by large purchasers who are not dealers, it is essential for effective authority that Treasury be able to require disclosure of all large holdings.

TRANSACTION RECORDKEEPING AND REPORTING

H.R. 618 also provides the Commission with the authority to request records directly from all government securities dealers and brokers for the purpose of reconstructing trading in furtherance of the purposes of the bill. The Commission supports the elimination of the provision that would have given the SEC authority to write transaction recordkeeping and reporting rules for all government securities broker-dealers, including banks. The Commission has determined that such a provision is not needed because Treasury already has ample authority to adopt the necessary recordkeeping rules for the institutions it regulates, as does the Commission for registered broker-dealers.

The Commission believes that H.R. 618 would put in place appropriate reforms to the current system. Ultimately these reforms should significantly improve investor protection standards while protecting market efficiency. Once again, the Commission applauds the hard work of the Committee and is ready and willing to assist you as the legislative process goes forward. If I or the Commission staff can be of any further help to you, please don't hesitate to contact us.

Sincerely,

ARTHUR LEVITT, *Chairman.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * * * *

DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

(12)(A) * * *

(B)(i) Notwithstanding subparagraph (A)(i) of this paragraph, government securities shall not be deemed to be "exempted securities" for the purposes of section 17A of this title.

(ii) Notwithstanding subparagraph (A)(ii) of this paragraph, municipal securities shall not be deemed to be "exempted securities" for the purposes of sections [15, 15A (other than subsection (g)(3)), and 17A] *15 and 17A* of this title.

* * * * * * *

(34) The term "appropriate regulatory agency" means—

(A) * * *

* * * * * * *

(G) When used with respect to a government securities broker or government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) * * *

[(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, a State branch or a State agency of a foreign bank, or a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978);

[(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank);

[(iv) the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;]

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, an uninsured State branch or State agency of a foreign bank, a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978), or a corporation organized or having an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 or section 25A of the Federal Reserve Act;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank) or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978);

(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation;

* * * * * * *

[(46) The term "financial institution" means (A) a bank (as such term is defined in paragraph (6) of this subsection), (B) a foreign bank, and (C) an insured institution (as such term is defined in section 401 of the National Housing Act).]

(46) The term "financial institution" means—

(A) a bank (as defined in paragraph (6) of this subsection);

(B) a foreign bank (as such term is used in the International Banking Act of 1978); and

(C) a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation.

* * * * * * *

[(51)] *(52)* The term "foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.

* * * * * * *

REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a) * * *

(b)(1) A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the

grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. *The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership.* At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4) of this subsection.

* * * * * * *

(7) No registered broker or dealer *or government securities broker or government securities dealer registered (or required to register) under section 15C(a)(1)(A)* shall effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

(A) * * *

* * * * * * *

(c)(1)*(A)* No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member by means of any manipulative, deceptive, or other fraudulent device or [contrivance, and no municipal securities dealer] *contrivance.*

(B) No municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security by means of any manipulative, deceptive, or other fraudulent device or [contrivance. The Commission shall] *contrivance.*

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security

by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(D) The Commission shall, for the purposes of this paragraph, by rules and regulations define such devices or contrivances as are manipulative, deceptive, or otherwise fraudulent.

(E) The Commission shall, prior to adopting any rule or regulation under subparagraph (C), consult with and consider the views of the Secretary of the Treasury and each appropriate regulatory agency. If the Secretary of the Treasury or any appropriate regulatory agency comments in writing on a proposed rule or regulation of the Commission under such subparagraph (C) that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule.

(2)*(A)* No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any [fictitious quotation, and no municipal securities dealer] *fictitious quotation.*

(B) No municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such municipal securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any [fictitious quotation. The Commission shall] *fictitious quotation.*

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security in connection with which such government securities broker or government securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(D) The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

(E) The Commission shall, prior to adopting any rule or regulation under subparagraph (C), consult with and consider the views of the Secretary of the Treasury and each appropriate regulatory agency. If the Secretary of the Treasury or any appropriate regulatory agency comments in writing on a proposed rule or regulation of the Commission under such subparagraph (C) that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule.

* * * * * * *

(7) In connection with any bid for or purchase of a government security related to an offering of government securities by or on behalf of an issuer, no government securities broker, government securities dealer, or bidder for or purchaser of securities in such offering

shall knowingly or willfully make any false or misleading written statement or omit any fact necessary to make any written statement made not misleading. For purposes of the preceding sentence, the term "government security" shall not include any obligation subject to the public debt limit established in section 3101 of title 31, United States Code.

*　*　*　*　*　*　*

REGISTERED SECURITIES ASSOCIATIONS

SEC. 15A. (a) * * *

*　*　*　*　*　*　*

(f)[(1) Except as provided in paragraph (2) of this subsection, nothing in this section shall be construed to apply with respect to any transaction by a registered broker or dealer in any exempted security.

[(2) A registered securities association may adopt and implement rules applicable to members of such association (A) to enforce compliance by registered brokers and dealers with applicable provisions of this title and the rules and regulations thereunder, (B) to provide that its members and persons associated with its members shall be appropriately disciplined, in accordance with subsections (b)(7), (b)(8), and (h) of this section, for violation of applicable provisions of this title and the rules and regulations thereunder, (C) to provide for reasonable inspection and examination of the books and records of registered brokers and dealers, (D) to provide for the matters described in paragraphs (b)(3), (b)(4), and (b)(5) of this section, (E) to implement the provisions of subsection (g) of this section, and (F) to prohibit fraudulent, misleading, deceptive, and false advertising.]

[(3)] Nothing in subsection (b)(6) or (b)(11) of this section shall be construed to permit a registered securities association to make rules concerning any transaction by a registered broker or dealer in a municipal security.

(g)(1) * * *

*　*　*　*　*　*　*

(3)(A) * * *

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(D) Nothing in subparagraph (A), (B), or (C) of this paragraph shall be construed to permit a registered securities association to deny membership to or condition the membership of, or bar any person from becoming associated with or condition the association of any person with, a broker or dealer that engages exclusively in transactions in [exempted securities] *municipal securities*.

[(4)(A) A registered securities association may deny membership to, or condition the membership of, a government securities broker or government securities dealer if such government securities broker or government securities dealer (i) does not meet standards of financial responsibility under rules adopted pursuant to section 15C(b)(1)(A) of this title, or (ii) has engaged and there is a reasonable likelihood that it will again engage in any conduct or practice which would subject such government securities broker or govern-

ment securities dealer to sanctions under section 15C(c) of this title. A registered securities association may establish procedures including examination of the books and records of government securities brokers and government securities dealers to verify compliance with the provisions of this title and the rules thereunder.

[(B) A registered securities association may bar any person from becoming associated with a member or condition the association of a person with a member (i) if such person has engaged in any conduct or practice and there is a reasonable likelihood that such person will again engage in any conduct or practice which would subject such person to sanctions under section 15C(c) of this title, or (ii) if such person does not agree to supply such association with such information with respect to its relationship and dealings with the member as may be specified in the rules of the association and to permit examination of its books and records to verify the accuracy thereof.]

[(5)] *(4)* A registered securities association may deny membership to a registered broker or dealer not engaged in a type of business in which the rules of the association require members to be engaged: *Provided, however,* That no registered securities association may deny membership to a registered broker or dealer by reason of the amount of such type of business done by such broker or dealer or the other types of business in which he is engaged.

* * * * * * *

GOVERNMENT SECURITIES BROKERS AND DEALERS

SEC. 15C. (a)(1) * * *

(2) A government securities broker or a government securities dealer subject to the registration requirement of paragraph (1)(A) of this subsection may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such government securities broker or government securities dealer and any persons associated with such government securities broker or government securities dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within 45 days of the date of filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(i) by order grant registration, or

(ii) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. *The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 6 of this title, or a securities association registered under section 15A of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership.* At the conclusion of such proceedings, the Commission, by order, shall grant or deny

such registration. The Commission may extend the time for the conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a government securities broker or a government securities dealer if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

* * * * * * *

(4) The Secretary of the Treasury (hereinafter in this section referred to as the "Secretary"), by rule or order, upon the Secretary's own motion or upon application, may conditionally or unconditionally exempt any government securities broker or government securities dealer, or class of government securities brokers or government securities dealers, from any provision of subsection (a), (b), or (d) of this section, *other than subsection (d)(3),* or the rules thereunder, if the Secretary finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this title.

(b)(1) * * *

* * * * * * *

(3) SALES PRACTICE RULES.—(A) With respect to any financial institution that has filed notice as a government securities broker or government securities dealer or that is required to file notice under subsection (a)(1)(B) of this section, the appropriate regulatory agency for such government securities broker or government securities dealer may issue such rules with respect to transactions in government securities as may be necessary to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

(B) Each appropriate regulatory agency shall consult with the other appropriate regulatory agencies for the purpose of ensuring the consistency of the rules prescribed by such agencies under this paragraph. The appropriate regulatory agencies shall consult with and consider the views of the Secretary and the Commission with respect to the impact of such rules on the operations of the market for government securities, consistency with analogous rules of self-regulatory organizations, and the enforcement and administration of such rules. The consultation required by this paragraph shall be conducted prior to the appropriate regulatory agency adopting a rule under this paragraph, unless the appropriate regulatory agency determines that an emergency exists requiring expeditious and summary action and publishes its reasons therefor. If the Secretary or the Commission comments in writing to the appropriate regulatory agency on a proposed rule that has been published for comment, the appropriate regulatory agency shall respond in writing to such written comment before adopting the rule.

[(3)] *(4)* Rules promulgated and orders issued under this section shall—

(A) be designed to prevent fraudulent and manipulative acts and practices and to protect the integrity, liquidity, and efficiency of the market for government securities, investors, and the public interest; and

(B) not be designed to permit unfair discrimination between customers, issuers, government securities brokers, or government securities dealers, or to impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.

[(4)] *(5)* In promulgating rules and issuing orders under this section, the Secretary—

(A) may appropriately classify government securities brokers and government securities dealers (taking into account relevant matters, including types of business done, nature of securities other than government securities purchased or sold, and character of business organization) and persons associated with government securities brokers and government securities dealers;

* * * * * * *

[(5)] *(6)* If the Commission or the Board of Governors of the Federal Reserve System comments in writing on a proposed rule of the Secretary that has been published for comment, the Secretary shall respond in writing to such written comment before approving the proposed rule.

[(6)] *(7)* No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security in contravention of any rule under this section.

* * * * * * *

(d)(1) * * *

[(2) Information received by any appropriate regulatory agency or the Secretary from or with respect to any government securities broker or government securities dealer or with respect to any person associated therewith may be made available by the Secretary or the recipient agency to the Commission, the Secretary, any appropriate regulatory agency, and any self-regulatory organization.]

(2) Information received by an appropriate regulatory agency, the Secretary, or the Commission from or with respect to any government securities broker, government securities dealer, any person associated with a government securities broker or government securities dealer, or any other person subject to this section or rules promulgated thereunder, may be made available by the Secretary or the recipient agency to the Commission, the Secretary, the Department of Justice, the Commodity Futures Trading Commission, any appropriate regulatory agency, any self-regulatory organization, or any Federal Reserve Bank.

(3) GOVERNMENT SECURITIES TRADE RECONSTRUCTION.—

(A) FURNISHING RECORDS.—Every government securities broker and government securities dealer shall furnish to the Commission on request such records of government securities transactions, including records of the date and time of execution of trades, as the Commission may require to reconstruct trading

in the course of a particular inquiry or investigation being conducted by the Commission. In requiring information pursuant to this paragraph, the Commission shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission, to the Federal Reserve Bank of New York, or to an appropriate regulatory agency or self-regulatory organization with responsibility for examining the government securities broker or government securities dealer. The Commission may require that such information be furnished in machine readable form notwithstanding any limitation in subparagraph (B).

(B) LIMITATION; CONSTRUCTION.—The Commission shall not utilize its authority under this paragraph to develop regular reporting requirements, except that the Commission may require information to be furnished under this paragraph as frequently as necessary for particular inquiries or investigations. This paragraph shall not be construed as requiring, or as authorizing the Commission to require, any government securities broker or government securities dealer to obtain or maintain any information for purposes of this paragraph which is not otherwise maintained by such broker or dealer in accordance with any other provision of law or usual and customary business practice. The Commission shall, where feasible, avoid requiring any information to be furnished under this paragraph that the Commission may obtain from the Federal Reserve Bank of New York.

(C) PROCEDURES FOR REQUIRING INFORMATION.—At the time the Commission requests any information pursuant to subparagraph (A) with respect to any government securities broker or government securities dealer for which the Commission is not the appropriate regulatory agency, the Commission shall notify the appropriate regulatory agency for such government securities broker or government securities dealer and, upon request, furnish to the appropriate regulatory agency any information supplied to the Commission.

(D) CONSULTATION.—Within 90 days after the date of the enactment of this paragraph, and annually thereafter, or upon the request of any other appropriate regulatory agency, the Commission shall consult with the other appropriate regulatory agencies to determine the availability of records that may be required to be furnished under this paragraph and, for those records available directly from the other appropriate regulatory agencies, to develop a procedure for furnishing such records expeditiously upon the Commission's request.

(E) EXCLUSION FOR EXAMINATION REPORTS.—Nothing in this paragraph shall be construed so as to permit the Commission to require any government securities broker or government securities dealer to obtain, maintain, or furnish any examination report of any appropriate regulatory agency other than the Commission or any supervisory recommendations or analysis contained in any such examination report.

(F) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission and

the appropriate regulatory agencies shall not be compelled to disclose any information required or obtained under this paragraph. Nothing in this paragraph shall authorize the Commission or any appropriate regulatory agency to withhold information from Congress, or prevent the Commission or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or from complying with an order of a court of the United States in an action brought by the United States, the Commission, or the appropriate regulatory agency. For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

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(f) LARGE POSITION REPORTING.—

(1) REPORTING REQUIREMENTS.—The Secretary may adopt rules to require specified persons holding, maintaining, or controlling large positions in to-be-issued or recently issued Treasury securities to file such reports regarding such positions as the Secretary determines to be necessary or appropriate for the purpose of monitoring the impact in the Treasury securities market of concentrations of positions in Treasury securities and for the purpose of otherwise assisting the Commission in the enforcement of this title. Reports required under this subsection shall be filed with the Federal Reserve Bank of New York, acting as agent for the Secretary, and shall be provided by that Federal Reserve Bank to the Commission on a timely basis.

(2) RECORDKEEPING REQUIREMENTS.—Rules under this subsection may require persons holding, maintaining, or controlling large positions in Treasury securities to make and keep for prescribed periods such records as the Secretary determines are necessary or appropriate to ensure that such persons can comply with reporting requirements under this subsection.

(3) AGGREGATION RULES.—Rules under this subsection—

(A) may prescribe the manner in which positions and accounts shall be aggregated for the purpose of this subsection, including aggregation on the basis of common ownership or control; and

(B) may define which persons (individually or as a group) hold, maintain, or control large positions.

(4) DEFINITIONAL AUTHORITY; DETERMINATION OF REPORTING THRESHOLD.—

(A) In prescribing rules under this subsection, the Secretary may, consistent with the purpose of this subsection, define terms used in this subsection that are not otherwise defined in section 3 of this title.

(B) Rules under this subsection shall specify—

(i) the minimum size of positions subject to reporting under this subsection, taking into account the purposes of this subsection and the potential for price distortions or other anomalies resulting from large positions;

(ii) the types of positions (which may include financing arrangements) to be reported;

(iii) the securities to be covered; and

(iv) the form and manner in which reports shall be transmitted, which may include transmission in machine readable form.

(5) LIMITATION ON DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Secretary and the Commission shall not be compelled to disclose any information required to be kept or reported under this subsection. Nothing in this subsection shall authorize the Secretary or the Commission to withhold information from Congress, or prevent the Secretary or the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or from complying with an order of a court of the United States in an action brought by the United States, the Secretary, or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

[(g)(1) The authority of the Secretary to issue orders and to propose and adopt rules under this section shall terminate on October 1, 1991.

[(2) All orders and rules—

[(A) which have been issued or adopted by the Secretary, and

[(B) which are in effect on the date specified in paragraph (1),

shall continue in effect according to their terms.]

(g) POLICIES AND PROCEDURES TO PREVENT AND DETECT VIOLATIONS.—Every government securities broker and government securities dealer shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such person's business, to prevent and detect in connection with the purchase or sale of government securities, insofar as practicable, fraud and manipulation in violation of this title and the rules and regulations thereunder and violations of such other provisions of this title and the rules and regulations thereunder as the appropriate regulatory agency for such government securities broker or government securities dealer shall designate by rule.

[(f)] *(h)*(1) Nothing in this section except paragraph (2) of this subsection shall be construed to impair or limit the authority under any other provision of law of the Commission, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the Federal Savings and Loan Insurance Corporation, the Secretary of Housing and Urban Development, and the Government National Mortgage Association.

(2) Notwithstanding any other provision of this title, the Commission shall not have any authority to make investigations of, require the filing of a statement by, or take any other action under this title against a government securities broker or government securities dealer, or any person associated with a government securities broker or government securities dealer, for any violation or threatened violation of the provisions of this section, *other than*

subsection (d)(3) or the rules or regulations thereunder, unless the Commission is the appropriate regulatory agency for such government securities broker or government securities dealer. Nothing in the preceding sentence shall be construed to limit the authority of the Commission with respect to violations or threatened violations of any provision of this title other than this section *(except subsection (d)(3))*, the rules or regulations under any such other provision, or investigations pursuant to section 21(a)(2) of this title to assist a foreign securities authority.

* * * * * * *

REGISTRATION, RESPONSIBILITIES, AND OVERSIGHT OF SELF-REGULATORY ORGANIZATIONS

SEC. 19. (a) * * *

(b)(1) * * *

* * * * * * *

(5) The Commission shall consult with and consider the views of the Secretary of the Treasury prior to approving a proposed rule change filed by a registered securities association that primarily concerns conduct related to transactions in government securities, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor. If the Secretary comments in writing to the Commission on such proposed rule change that has been published for comment, the Commission shall respond in writing to such written comment before approving the proposed rule change.

* * * * * * *

(c) The Commission, by rule, may abrogate, add to, and delete from (hereinafter in this subsection collectively referred to as "amend") the rules of a self-regulatory organization (other than a registered clearing agency) as the Commission deems necessary or appropriate to insure the fair administration of the self-regulatory organization, to conform its rules to requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title, in the following manner:

(1) * * *

* * * * * * *

(5) Before adopting a rule to amend a rule of a registered securities association that primarily concerns conduct related to transactions in government securities, the Commission shall consult with and consider the views of the Secretary, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor. If the Secretary comments in writing to the Commission on such proposed rule change that has been published for comment, the Commission shall respond in writing to such written comment before approving the proposed rule change.

* * * * * * *

RULES, REGULATIONS, AND ORDERS; ANNUAL REPORTS

SEC. 23. (a) * * *
(b)(1) * * *

*   *   *   *   *   *   *

(4) The Commission shall also include in its annual report to the Congress for each fiscal year—

(A) * * *

*   *   *   *   *   *   *

[(C) beginning in 1975 and ending in 1980, information, data, and recommendations with respect to the development of a national system for the prompt and accurate clearance and settlement of securities transactions, including a summary of the regulatory activities, operational capabilities, financial resources, and plans of self-regulatory organizations and registered transfer agents with respect thereto;

[(D) beginning in 1975 and ending in 1980, a description of the steps taken, and an evaluation of the progress made, toward the establishment of a national market system, and recommendations for further legislation it considers advisable with respect to such system;]

[(E)] *(C)* the steps the Commission has taken and the progress it has made toward ending the physical movement of the securities certificate in connection with the settlement of securities transactions, and its recommendations, if any, for legislation to eliminate the securities certificate;

[(F)] *(D)* the number of requests for exemptions from provisions of this title received, the number granted, and the basis upon which any such exemption was granted;

[(G)] *(E)* a summary of the Commission's regulatory activities with respect to municipal securities dealers for which it is not the appropriate regulatory agency, including the nature of, and reason for, any sanction imposed in proceedings against such municipal securities dealers;

[(H) beginning in 1975 and ending in 1980, a description of the effect the absence of any schedule or fixed rates of commissions, allowances, discounts, or other fees to be charged by members for effecting transactions on a national securities exchange is having on the maintenance of fair and orderly markets and the development of a national market system for securities;

[(I)] *(F)* a statement of the time elapsed between the filing of reports pursuant to section 13(f) of this title and the public availability of the information contained therein, the costs involved in the Commission's processing of such reports and tabulating such information, the manner in which the Commission uses such information, and the steps the Commission has taken and the progress it has made toward requiring such reports to be filed and such information to be made available to the public in machine language;

[(J)] *(G)* information concerning (i) the effects its rules and regulations are having on the viability of small brokers and dealers; (ii) its attempts to reduce any unnecessary reporting

burden on such brokers and dealers; and (iii) its efforts to help to assure the continued participation of small brokers and dealers in the United States securities markets; [and]

[(K)] *(H)* a statement detailing its administration of the Freedom of Information Act, section 552 of title 5, United States Code, including a copy of the report filed pursuant to subsection (d) of such section[.]*; and*

(I) the steps that have been taken and the progress that has been made in promoting the timely public dissemination and availability for analytical purposes (on a fair, reasonable, and nondiscriminatory basis) of information concerning government securities transactions and quotations, and its recommendations, if any, for legislation to assure timely dissemination of (i) information on transactions in regularly traded government securities sufficient to permit the determination of the prevailing market price for such securities, and (ii) reports of the highest published bids and lowest published offers for government securities (including the size at which persons are willing to trade with respect to such bids and offers).

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103D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session 103–256

MAKING APPROPRIATIONS FOR THE TREASURY DEPARTMENT, THE UNITED STATES POSTAL SERVICE, THE EXECUTIVE OFFICE OF THE PRESIDENT, AND CERTAIN INDEPENDENT AGENCIES, FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1994, AND FOR OTHER PURPOSES

SEPTEMBER 24, 1993.—Ordered to be printed

Mr. HOYER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2403]

The Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2403) "making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1994, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 3, 12, 16, 26, 28, 37, 38, 39, 56, 58, 74, 79, 81, 84, 86, 87, 89, 90, 91, 95, 96, 100, 104, and 105.

That the House recede from its disagreement to the amendments of the Senate numbered 5, 7, 8, 10, 11, 15, 17, 18, 19, 21, 22, 23, 27, 30, 31, 32, 36, 41, 44, 45, 46, 52, 53, 57, 59, 60, 61, 62, 66, 68, 69, 70, 72, 73, 75, 80, 83, 85, 92, 93, 98, and 99, and agree to the same.

Amendment numbered 1:

That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *of which not less than $6,352,000 shall be available for enforcement activities; not to exceed $1,500,000 to remain available until expended shall be available for systems modernization requirements;* ; and the Senate agree to the same.

Amendment numbered 2:

That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, as follows:

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In lieu of the sum proposed by said amendment, insert: *$105,150,000*; and the Senate agree to the same.

Amendment numbered 4:

That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$32,500,000*; and the Senate agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$47,445,000*; and the Senate agree to the same.

Amendment numbered 9:

That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment, as follows:

In lieu of "$368,046,000" named in said amendment, insert: *$366,446,000*; and the Senate agree to the same.

Amendment numbered 13:

That the House recede from its disagreement to the amendment of the Senate numbered 13, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided further, That no funds made available by this or any other Act may be used to implement any reorganization of the Bureau of Alcohol, Tobacco and Firearms or transfer of the Bureau's functions, missions, or activities to other agencies or Departments in the fiscal year ending on September 30, 1994*; and the Senate agree to the same.

Amendment numbered 14:

That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$1,350,668,000*; and the Senate agree to the same.

Amendment numbered 20:

That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment, insert: *$5,000,000*; and the Senate agree to the same.

Amendment numbered 24:

That the House recede from its disagreement to the amendment of the Senate numbered 24, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$4,007,962,000 of which not to exceed $1,000,000 shall remain available until expended for research; and of which not less than $350,000,000 shall be available for tax fraud investigation activities*; and the Senate agree to the same.

Amendment numbered 25:

That the House recede from its disagreement to the amendment of the Senate numbered 25, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$1,471,448,000*; and the Senate agree to the same.

Amendment numbered 29:

That the House recede from its disagreement to the amendment of the Senate numbered 29, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

SEC. 101A. Any obligation or expenditure by the Secretary in connection with law enforcement activities of a Federal agency or of a Department of the Treasury law enforcement organization in accordance with 31 U.S.C. 9703(g)(4)(B) from unobligated balances remaining in the Fund on September 30, 1994, shall be made in compliance with the reprogramming guidelines contained in the House and Senate reports accompanying H.R. 2403, an Act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1994.

And the Senate agree to the same.

Amendment numbered 33:

That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *105*; and the Senate agree to the same.

Amendment numbered 34:

That the House recede from its disagreement to the amendment of the Senate numbered 34, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

SEC. 106. (a) Notwithstanding any other provision of law, hereafter, for purposes of complying with Executive Order No. 12839 and guidance issued thereunder, the number of civilian personnel positions that the Department of the Treasury may be required to eliminate in fiscal year 1994 and in fiscal year 1995 shall not exceed a number determined for each year by multiplying a fiscal year 1993 base which excludes all exempt positions by the applicable percentages in Executive Order No. 12839.

(b) For the purposes of this section, "exempt position" means a personnel position in the Department of the Treasury which the Secretary of the Treasury determines to be primarily employed in law enforcement.

And the Senate agree to the same.

Amendment numbered 35:

That the House recede from its disagreement to the amendment of the Senate numbered 35, and agree to the same with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

SEC. 107. The Internal Revenue Service shall institute policies and procedures which will safeguard the confidentiality of taxpayer information.

SEC. 108. AMENDMENTS TO TITLE 5.—(a) Title 5 of the United States Code is amended—

(1) in section 5316, by striking "Commissioner of Customs, Department of the Treasury."; and

(2) in section 5315, by adding at the end "Commissioner of Customs, Department of the Treasury.".

(b) The amendments made by this section shall take effect on the first applicable pay period after enactment.

SEC. 109. Notwithstanding any other provision of this Act, aircraft which is one-of-a-kind and has been identified as excess to Customs requirements, and aircraft which is damaged beyond repair, may be transferred from the Department of the Treasury during fiscal year 1994 upon the advance approval of the House and Senate Committees on Appropriations.

SEC. 110. The funds provided to the Bureau of Alcohol, Tobacco and Firearms for fiscal year 1994 in this Act for the enforcement of the Federal Alcohol Administration Act shall be expended in a manner so as not to diminish enforcement efforts with respect to Section 105 of the Federal Alcohol Administration Act.

And the Senate agree to the same.

Amendment numbered 40:

That the House recede from its disagreement to the amendment of the Senate numbered 40, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$11,687,000: Provided, That the Office of National Drug Control Policy shall hire and maintain not less than 40 full-time equivalent positions in fiscal year 1994*; and the Senate agree to the same.

Amendment numbered 42:

That the House recede from its disagreement to the amendment of the Senate numbered 42, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

For activities authorized by Public Law 100–690, $52,500,000, of which $28,000,000 shall be derived from deposits in the Special Forfeiture Fund; of which $25,000,000 shall be transferred to the Substance Abuse and Mental Health Services Administration, and of which $10,000,000 shall be available to the Center for Substance Abuse Prevention for community partnership grants, and of which $5,000,000 shall be available to the Center for Substance Abuse Prevention for the residential women/children program, and of which $10,000,000 shall be available for the Substance Abuse Prevention and Treatment Block Grant to the States; of which $7,500,000, to remain available until expended, shall be transferred to the Counter-Drug Technology Assessment Center for counternarcotics research and development projects and shall be available for transfer to other Federal departments or agencies; of which $5,000,000 shall be transferred to the Bureau of Alcohol, Tobacco and Firearms for gang resistance education and training programs; of which $6,000,000 shall be transferred to the Internal Revenue Service, "Tax law enforcement" account, for criminal investigations; of which $4,000,000 shall be transferred to the Drug Enforcement Adminis-

tration for the enhancement of the El Paso Intelligence Center; and of which $5,000,000 shall be transferred to drug control agencies in amounts to be determined by the Director, upon the advance approval of the House and Senate Committees on Appropriations.

And the Senate agree to the same.

Amendment numbered 43:

That the House recede from its disagreement to the amendment of the Senate numbered 43, and agree to the same with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SALARIES AND EXPENSES

For necessary expenses of the Administrative Conference of the United States, established by the Administrative Conference Act, as amended (5 U.S.C. 571 et seq.), including not to exceed $1,000 for official reception and representation expenses, $1,800,000.

Section 401. (a) Notwithstanding any other provision of law, a Federal agency when purchasing toner cartridges for use in laser printers, photocopiers, facsimile machines, or micrographic printers is authorized to give preference to remanufactured toner cartridges made in the United States by small businesses and, recycled toner cartridges unless the contracting or purchasing officer determines in writing that—

(1) adequate market research establishes that remanufactured or recycled cartridges for the type of equipment used by the agency do not exist,

(2) the price or life cycle cost offered for the cartridges is higher than the original equipment manufacturer's new cartridge, or

(3) remanufactured or recycled cartridges are not available in quantities needed within the timeframes required.

(b) Nothing in this section shall prohibit the purchase of one newly manufactured cartridge (or a number equal to those normally supplied at the time of initial purchase) as a part of an initial printer or copier acquisition.

(c) The provision of this section shall not affect current law with respect to Organizations for the Blind or Other Severely Handicapped (NIB/NISH).

And the Senate agree to the same.

Amendment numbered 47:

That the House recede to its disagreement to the amendment of the Senate numbered 47, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment, insert: *$288,486,000*; and the Senate agree to the same.

Amendment numbered 48:

That the House recede from its disagreement to the amendment of the Senate numbered 48, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$5,251,117,306*; and the Senate agree to the same.

Amendment numbered 49:

That the House recede from its disagreement to the amendment of the Senate numbered 49, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$925,027,306*; and the Senate agree to the same.

Amendment numbered 50:

That the House recede from its disagreement to the amendment of the Senate numbered 50, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

Alabama:

Montgomery, U.S. Courthouse Annex, $13,091,000

Arkansas:

Little Rock, Old Law School Building Expansion/Alteration, $13,816,040

Arizona:

Phoenix, U.S. Courthouse, $120,000,000

Safford, a grant to the U.S. Forest Service for Administrative Offices and Cultural Center, $5,000,000

Sierra Vista, U.S. Magistrates Office, $1,000,000

California:

Sacramento, Federal Building and U.S. Courthouse, $143,082,450

San Jose, Federal Office Building, claim, $1,828,680

Santa Ana, Federal Building and U.S. Courthouse, $103,000,000

Florida:

Jacksonville, U.S. Courthouse, site acquisition and design, $6,070,120

Tampa, U.S. Courthouse, $66,696,840

Georgia:

Atlanta, Centers for Disease Control, Laboratory and office building, $12,000,000

Augusta, U.S. Courthouse, $1,000,000

Indiana:

Hammond, U.S. Courthouse, $49,980,000

Iowa:

Burlington, Federal Parking Facility, design and construction, $2,400,000

Maryland:

Bowie, Bureau of the Census, Computer Center, $27,915,000

Montgomery and Prince George's Counties, Food and Drug Administration, consolidation, site acquisition, planning and design, construction, $73,921,000

Massachusetts:

Boston, Federal Building and U.S. Courthouse, $18,620,000

Missouri:

Cape Girardeau, Federal Office Building and U.S. Courthouse, $3,822,000

Kansas City, U.S. Courthouse, $16,000,000

St. Louis, U.S. Courthouse, $24,000,000

Nebraska:

Omaha, Federal Building and U.S. Courthouse, $9,361,940

New Jersey:

Newark, Martin Luther King, Jr. Federal Building and U.S. Courthouse, escalation, $4,293,576

New York:

Brooklyn, U.S. Courthouse, $29,400,000

Rochester, federal center, in addition to the amount previously provided for this purpose under this heading in Public Law 101–509, $5,000,000

North Carolina:

Federal Research Park, Environmental Protection Agency Facility, $8,800,000

North Dakota:

Pembina, Border Station, $96,000

Ohio:

Youngstown, Federal Building and U.S. Courthouse, site acquisition and design, $4,630,500

Oregon:

Portland, U.S. Courthouse, $96,390,000

Pennsylvania:

Scranton, Federal Building and U.S. Courthouse Annex, site acquisition and design, $12,093,000

Texas:

Laredo, Federal Building and U.S. Courthouse, $2,986,060

Vermont:

Highgate Springs, Border Station, $6,851,000

Washington:

Lynden, Federal Building, claim, $357,000

West Virginia:

Wheeling, Federal Building and U.S. Courthouse, including renovations to the existing facility, $36,000,000

Nonprospectus construction projects, $5,525,000

And the Senate agree to the same.

Amendment numbered 51:

That the House recede from its disagreement to the amendment of the Senate numbered 51, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows: *: Provided, That the $5,000,000 for nonprospectus construction projects made available in Public Law 102–393 for flexiplace work telecommuting centers, is hereby increased by $1,000,000 from the funds made available in this Act for nonprospectus construction projects, all of which shall remain available until expended, for the acquisition, lease, construction, and equipping of four flexiplace work telecommuting centers, one of which shall be in Southern Maryland, one of which shall be in northwestern Virginia, one of which shall be in Hagerstown, Maryland and one of which shall be in Fredericksburg, Virginia: Provided further*; and the Senate agree to the same.

Amendment numbered 54:

That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$523,782,000*; and the Senate agree to the same.

Amendment numbered 55:

That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows: *Energy Retrofit Projects, $7,000,000*; and the Senate agree to the same.

Amendment numbered 63:

That the House recede from its disagreement to the amendment of the Senate numbered 63, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows: *: Provided further, That of the funds provided in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for fiscal year 1994 for the modernization of the Beltsville Agricultural Research Center, the Department of Agriculture may provide up to $6,000,000 to a nonprofit entity towards the cost of construction of a facility to house microbial collections of the government under such terms as the Department determines are appropriate: Provided further, That the Department is authorized to make available sufficient space at the Beltsville Agriculture Research Center, at such terms as the Department determines are appropriate, for construction of such a facility*; and the Senate agree to the same.

Amendment numbered 64:

That the House recede from its disagreement to the amendment of the Senate numbered 64, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided further, That no funds shall be made available for leases, line-item construction, repairs, or alterations projects in this Act, with the exception of the Safford, Arizona and Rochester, New York projects, that are subject to section 7(a) of the Public Buildings Act of 1959 (40 U.S.C. 606(a)) prior to February 1, 1994, unless the projects are approved by the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works: Provided further, That subject to the exceptions contained in the preceding proviso, in no case shall such funds be made available for any lease, line-item construction, repair, or alterations project referred to in the preceding proviso if prior to February 1, 1994, the lease, line-item construction, repair, or alterations project has been disapproved by the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works: Provided further, That the Administrator of General Services shall submit detailed information on each lease, line-item construction, repair, and alterations project in this Act that is subject to section 7(a) of the Public Buildings Act of 1959 (40 U.S.C. 606(a)) to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works no later than 30 days after the date of enactment of this Act*; and the Senate agree to the same.

Amendment numbered 65:

That the House recede from its disagreement to the amendment of the Senate numbered 65, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$5,251,117,306*; and the Senate agree to the same.

Amendment numbered 67:

That the House recede from its disagreement to the amendment of the Senate numbered 67, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$45,675,000*; and the Senate agree to the same.

Amendment numbered 71:

That the House recede from its disagreement to the amendment of the Senate numbered 71, and agree to the same with an amendment, as follows:

After the word "property" named in said amendment, insert: *of comparable value*; and the Senate agree to the same.

Amendment numbered 76:

That the House recede from its disagreement to the amendment of the Senate numbered 76, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$3,805,480,000*; and the Senate agree to the same.

Amendment numbered 77:

That the House recede from its disagreement to the amendment of the Senate numbered 77, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$195,482,000*; and the Senate agree to the same.

Amendment numbered 78:

That the House recede from its disagreement to the amendment of the Senate numbered 78, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$5,250,000*; and the Senate agree to the same.

Amendment numbered 82:

That the House recede from its disagreement to the amendment of the Senate numbered 82, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

SEC. 517A. Such sums as may be necessary for fiscal year 1994 pay raises for programs funded by this Act shall be absorbed within the levels appropriated by this Act.

SEC. 517B. (a) Any adjustment required by section 5303 of title 5, United States Code, to become effective in fiscal year 1994 in the rates of basic pay for the statutory pay systems shall not be made.

(b) For the purpose of this section, the term "statutory pay system" has the meaning given such term by section 5302(1) of title 5, United States Code.

And the Senate agree to the same.

Amendment numbered 88:

That the House recede from its disagreement to the amendment of the Senate numbered 88, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

SEC. 528. The Administrator of General Services shall promptly review the need of the General Services Administration for the parcel of land which it controls and which is located at 424 Trapelo Road in the City of Waltham, Massachusetts. The Administrator shall promptly determine to be excess property so much of said parcel as is no longer required for the needs of the General Services Administration. Subject to agreement between the Administrator and the Secretary of the Army concerning such portion of the excess property as may be required for the use of the Corps of Engineers, the Administrator shall transfer such portion to the Secretary of the Army without reimbursement. The property not included in such transfer shall be determined to be surplus property and shall be available only for transfer for a public purpose under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)), except that an expression of interest or an application for a public purpose use under said section other than for educational purposes may not be received after 45 days from the date the Administrator determines the property to be surplus. If no transfer under section 203(k) has been made within one year after the date of such surplus determination, the Administrator may dispose of the property in accordance with all applicable provisions of that Act.

And the Senate agree to the same.

Amendment numbered 94:

That the House recede from its disagreement to the amendment of the Senate numbered 94, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

(A) during that portion of fiscal year 1994 which precedes the start of the period described in subparagraph (B), in an amount that exceeds the rate payable for the applicable grade and step of the applicable wage schedule in accordance with section 616 of the Treasury, Postal Service, and General Government Appropriations Act, 1993, on the last day of the limitation imposed by such section 616; and

(B) during the period from the date determined under paragraph (2) until the end of fiscal year 1994, in an amount that exceeds the maximum rate allowable under subparagraph (A) by more than the amount determined under paragraph (3).

(2) The period under paragraph (1)(B) shall begin on the first day of the first applicable pay period beginning on or after the later of—

(A) the normal effective date of the applicable wage survey adjustment that is to become effective in fiscal year 1994 (determined as if this section and section 616 of the Treasury, Postal Service, and General Government Appropriations Act, 1993, were not in effect); or

(B) January 1, 1994.

(3)(A) If, during fiscal year 1994, employees under the General Schedule receive locality-based comparability payments under section 5304 of title 5, United States Code, but do not receive a pay

adjustment under section 5303 of such title, the applicable amount under this paragraph shall be equal to one-fifth of the difference between the maximum amount allowable under paragraph (1)(A) and the amount that would be payable under subchapter IV of chapter 53 of such title (taking into account the applicable wage survey adjustment referred to in paragraph (2)(A)) were this section and section 616 of the Treasury, Postal Service, and General Government Appropriations Act, 1993, not in effect.

(B) If, during fiscal year 1994, employees under the General Schedule receive a pay adjustment under section 5303 of title 5, United States Code, and locality-based comparability payments under section 5304 of such title, the applicable amount under this paragraph shall be equal to—

(i) the amount determined under subparagraph (A); and

(ii) the amount resulting from an increase of 2.2 percent.

(C) The applicable amount under this paragraph shall be zero if neither subparagraph (A) nor subparagraph (B) applies.

(4) The Office of Personnel Management shall discuss with and consider the views of the Federal Prevailing Rate Advisory Committee in carrying out the Office's responsibilities with respect to this paragraph; and the Senate agree to the same.

Amendment numbered 97:

That the House recede from its disagreement to the amendment of the Senate numbered 97, and agree to the same with an amendment, as follows:

In lieu of the first section number named in said amendment, insert: *620A*; and the Senate agree to the same.

Amendment numbered 101:

That the House recede from its disagreement to the amendment of the Senate numbered 101, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment, insert: *629*; and the Senate agree to the same.

Amendment numbered 102:

That the House recede from its disagreement to the amendment of the Senate numbered 102, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

TITLE VII—REVENUE FORGONE REFORM

SHORT TITLE; TABLE OF CONTENTS

SEC. 701. (a) SHORT TITLE.—This title may be cited as the "Revenue Forgone Reform Act".

(b) TABLE OF CONTENTS.—The table of contents for this title is as follows:

REFERENCES

SEC. 702. Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 39, United States Code.

REPEAL OF AUTHORIZATION OF APPROPRIATIONS FOR MAIL SENT AT REDUCED RATES OF POSTAGE

SEC. 703. (a) IN GENERAL.—Section 2401(c) is amended—

(1) in the first sentence—

(A) by striking "if sections" through "had not been enacted" and inserting "if sections 3217 and 3403 through 3406 had not been enacted"; and

(B) by striking "such sections and Acts." and inserting "such sections."; and

(2) in the second sentence—

(A) by striking "(i)"; and

(B) by striking "volume;" through "schedules." and inserting "volume.".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply with respect to appropriations for fiscal years beginning after September 30, 1993.

ESTABLISHING REDUCED RATES OF POSTAGE

SEC. 704. (a) RATES.—

(1) IN GENERAL.—Section 3626(a) is amended to read as follows:

"(a)(1) Except as otherwise provided in this section, rates of postage for a class of mail or kind of mailer under former section 4358, 4452(b), 4452(c), 4454(b), or 4454(c) of this title shall be established in accordance with the applicable provisions of this chapter.

"(2) For the purpose of this subsection—

"(A) the term 'costs attributable', as used with respect to a class of mail or kind of mailer, means the direct and indirect postal costs attributable to such class of mail or kind of mailer (excluding any other costs of the Postal Service);

"(B) the term 'regular-rate category' means any class of mail or kind of mailer, other than a class or kind referred to in paragraph (3)(A) or section 2401(c); and

"(C) the term 'institutional-costs contribution', as used with respect to a class of mail or kind of mailer, means that portion of the estimated revenues to the Postal Service from such class of mail or kind of mailer which remains after subtracting an amount equal to the estimated costs attributable to such class of mail or kind of mailer.

"(3)(A) Except as provided in paragraph (4) or (5), rates of postage for a class of mail or kind of mailer under former section 4358, 4452(b), 4452(c), 4554(b), or 4554(c) of this title shall be established in a manner such that the estimated revenues to be received by the Postal Service from such class of mail or kind of mailer shall be equal to the sum of—

"(i) the estimated costs attributable to such class of mail or kind of mailer; and

"(ii) the product derived by multiplying the estimated costs referred to in clause (i) by the applicable percentage under subparagraph (B).

"(B) The applicable percentage for any class of class of mail or kind of mailer referred to in subparagraph (A) shall be the product derived by multiplying—

"(i) the percentage which, for the most closely corresponding regular-rate category, the institutional-costs contribution for such category represents relative to the estimated costs attributable to such category of mail, times

"(ii)(I) one-twelfth, for fiscal year 1994;

"(II) one-sixth, for fiscal year 1995;

"(III) one-fourth, for fiscal year 1996;

"(IV) one-third, for fiscal year 1997;

"(V) five-twelfths, for fiscal year 1998; and

"(VI) one-half, for any fiscal year after fiscal year 1998.

"(C) Temporary special authority to permit the timely implementation of the preceding provisions of this paragraph is provided under section 3642.

"(D) For purposes of establishing rates of postage under this subchapter for any of the classes of mail or kinds of mailers referred to in subparagraph (A), subclauses (I) through (V) of subparagraph (B)(ii) shall be deemed amended by striking the fraction specified in each such subclause and inserting 'one-half'.

"(4) The rates for the advertising portion of any mail matter under former section 4358(d) or 4358(e) of this title shall be equal to the rates for the advertising portion of the most closely corresponding regular-rate category of mail, except that if the advertising portion does not exceed 10 percent of the issue of the publication involved, the advertising portion shall be subject to the same rates as apply to the nonadvertising portion.

"(5) The rates for any advertising under former section 4358(f) of this title shall be equal to 75 percent of the rates for advertising contained in the most closely corresponding regular-rate category of mail.".

(2) SPECIAL AUTHORITY.—Subchapter II of chapter 36 is amended by adding at the end the following:

"§3642. Special authority relating to reduced-rate categories of mail

"(a) In order to permit the timely implementation of section 3626(a)(3), the Postal Service may establish temporary rates of postage for any class of mail or kind of mailer referred to in section 3626(a)(3)(A).

"(b) Any exercise of authority under this section shall be in conformance with the requirements of section 3626(a), subject to the following:

"(1) All attributable costs and institutional-costs contributions assumed shall be the same as those which were assumed for purposes of the then most recent proceedings under subchapter II pursuant to which rates of postage for the class of mail or kind of mailer involved were last adjusted.

"(2) Any temporary rate established under this section shall take effect upon such date as the Postal Service may determine, except that—

"(A) such a rate may take effect only after 10 days' notice in the Federal Register; and

"(B) no such rate may take effect after September 30, 1998.

"(3) A temporary rate under this section may remain in effect no longer than the last day of the fiscal year in which it first takes effect.

"(4) Authority under this section may not be exercised in a manner that would result in more than 1 change taking effect under this section, during the same fiscal year, in the rates of postage for a particular class of mail or kind of mailer, except as provided in paragraph (5).

"(5) Nothing in paragraph (4) shall prevent an adjustment under this section in rates for a class of mail or kind of mailer with respect to which any rates took effect under this section earlier in the same fiscal year if—

"(A) the rates established for such class of mail or kind of mailer by the earlier adjustment are superseded by new rates established under subchapter II; and

"(B) authority under this paragraph has not previously been exercised with respect to such class of mail or kind of mailer based on the new rates referred to in subparagraph (A).

"(c) The Postal Service may prescribe any regulations which may be necessary to carry out this section, including provisions governing the coordination of adjustments under this section with any other adjustments under this title.

"(d) Notwithstanding any provision of section 3626(a)(3)(B) or subsection (a) of this section, any temporary rates established under this section for non-letter-shaped mail under former section 4452(b) or 4452(c) of this title shall not be lower than the rates in effect for such mail on September 30, 1993.".

(3) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) SECTION 3626.—Section 3626(i) is repealed.

(B) SECTION 3627.—

(i) IN GENERAL.—Section 3627 is amended—

(I) by striking "sent at a free or reduced rate under section 3217, 3403–3406, 3626, or 3629 of this title," and inserting "sent free of postage under section 3217 or 3403–3406"; and

(II) in the section heading by striking **"and reduced"***.*

(ii) TABLE OF CONTENTS.—The table of contents for chapter 36 is amended—

(I) by striking the item relating to section 3627 and inserting the following:

"3627. Adjusting free rates.";

and

(II) by inserting after the item relating to section 3641 the following:

"3642. Special authority relating to reduced-rate categories of mail.".

(b) AUTHORIZATION.—

(1) IN GENERAL.—Section 2401 is amended—

(A) by striking subsections (d) through (f);

(B) by redesignating subsections (g) through (i) as subsections (e) through (g), respectively;

(C) in subsection (f) (as so redesignated by subparagraph (B)) by striking the second sentence;

(D) in subsection (g) (as so redesignated by subparagraph (B)) by striking "subsections (b) and (d) of this section" and inserting "subsection (b)"; and

(E) by inserting after subsection (c) the following:

"(d) As reimbursement to the Postal Service for losses which it incurred as a result of insufficient amounts appropriated under section 2401(c) for fiscal years 1991 through 1993, and to compensate for the additional revenues it is estimated the Postal Service would have received under the provisions of section 3626(a), for the period beginning on October 1, 1993, and ending on September 30, 1998, if the fraction specified in subclause (VI) of section 3626(a)(3)(B)(ii) were applied with respect to such period (instead of the respective fractions specified in subclauses (I) through (V) thereof), there are authorized to be appropriated to the Postal Service $29,000,000 for each of fiscal years 1994 through 2035.".

(2) RATEMAKING LIMITATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), rates of postage may not be established, under subchapter II of chapter 36 of title 39, United States Code, in a manner designed to allow the United States Postal Service to receive through revenues any portion of the additional revenues (referred to in section 2401(d) of such title, as amended by paragraph (1)(E)) for which amounts are authorized to be appropriated under such section 2401(d).

(B) EXCEPTION.—If Congress fails to appropriate an amount authorized under section 2401(d) of title 39, United States Code (as amended by paragraph (1)(E)), rates for the various classes of mail may be adjusted in accordance with the provisions of subchapter II of chapter 36 of such title (excluding section 3627 thereof) such that the resulting increase in revenues will equal the amount that Congress so failed to appropriate.

(c) APPLICABILITY.—

(1) RATES.—The amendments made by subsection (a) shall apply with respect to rates for mail sent after September 30, 1993.

(2) AUTHORIZATION.—The amendments made by subsection (b) shall apply with respect to appropriations for fiscal years beginning after September 30, 1993.

ELIGIBLITY OF CERTAIN MAILINGS FOR REDUCED RATES OF POSTAGE

SEC. 705. (a) ADVERTISING.—Section 3626(j)(1) is amended—

(1) in subparagraph (B) by striking "or" after the semicolon;

(2) in subparagraph (C) by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(D) any product or service (other than any to which subparagraph (A), (B), or (C) relates), if—

"(i) the sale of such product or the providing of such service is not substantially related (aside from the need, on the part of the organization promoting such product or service, for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates; or

"(ii) the mail matter involved is part of a cooperative mailing (as defined under regulations of the Postal Service) with any person or organization not authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title;

except that—

"(I) any determination under clause (i) that a product or service is not substantially related to a particular purpose shall be made under regulations which shall be prescribed by the Postal Service and which shall be consistent with standards established by the Internal Revenue Service and the courts with respect to subsections (a) and (c) of section 513 of the Internal Revenue Code of 1986; and

"(II) clause (i) shall not apply if the product involved is a periodical publication described in subsection (m)(2) (including a subscription to receive any such publication.".

(b) PRODUCTS.—Section 3626 is amended by adding at the end the following:

"(m)(1) In the administration of this section, the rates for mail under former section 4452(b) or 4452(c) of this title shall not apply to mail consisting of products, unless such products—

"(A) were received by the organization as gifts or contributions; or

"(B) are low cost articles (as defined by section 513(h)(2) of the Internal Revenue Code of 1986).

"(2) Paragraph (1) shall not apply with respect to a periodical publication of a qualified nonprofit organization.".

(c) CERTIFICATION; VERIFICATION.—Section 3626(j)(3) is amended—

(1) by striking "(3)" and inserting "(3)(A)"; and

(2) by adding at the end the following:

"(B) The Postal Service shall establish procedures to carry out this paragraph, including procedures for mailer certification of compliance with the conditions specified in paragraph (1)(D) or subsection (m), as applicable, and verification of such compliance.".

(d) APPLICABILITY.—The amendments made by this section shall apply with respect to mail sent, and the rates for mail sent, after December 31, 1993.

PROVISIONS RELATING TO RATES FOR BOOKS AND CERTAIN OTHER MATERIALS

SEC. 706. (1) IN GENERAL.—Section 3683(b) is amended to read as follows:

"(b) The rates of postage under former section 4554(b)(1) of this title shall not be effective except with respect to mailings which—

"(1) constitute materials specified in former section 4554(b)(2) of this title; and

"(2) are sent between—

"(A) an institution, organization, or association listed in subparagraph (A) or (B) of such former section 4554(b)(1) and any other such institution, organization, or association;

"(B) an institution, organization, or association referred to in subparagraph (A) and any individual (other than an individual having a financial interest in the sale, promotion, or distribution of the materials involved);

"(C) an institution, organization, or association referred to in subparagraph (A) and a qualified nonprofit organization (as defined in former section 4452(d) of this title) that is not such an institution, organization, or association; or

"(D) an institution, organization, or association referred to in subparagraph (A) and a publisher, if such institution, organization, or association has placed an order to purchase such materials for delivery to such institution, organization, or association.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply with respect to mail sent after September 30, 1993.

SENSE OF CONGRESS

SEC. 707. It is the sense of the Congress that any legislation, enacted after September 30, 1994, which would have the effect of expanding the classes of mail or kinds of mailers eligible for reduced rates of postage should provide for sufficient funding to ensure that neither any losses to the United States Postal Service nor any increase in the rates of postage for any of the other classes of mail or kinds of mailers will result.

TECHNICAL CORRECTIONS

SEC. 708. (a) SECTION 410.—Section 410(b) is amended—

(1) in paragraph (8) by striking "and" after the semicolon;

(2) in the first paragraph (9) by striking "Chapter" and inserting "chapter", and by striking the period and inserting "; and"; and

(3) by designating the second paragraph (9) as paragraph (10).

(b) SECTION 3202.—Section 3202(a) is amended—

(1) in paragraph (3) by adding "and" after the semicolon; and

(2) in paragraph (4) by striking "; and" and inserting a period.

(c) SECTION 3601.—Section 3601(a) is amended by striking "consent" and inserting "consent".

(d) SECTION 3625.—Section 3625(d) is amended by striking "section 3268" and inserting "section 3628".

(e) SECTION 3626.—Section 3626 is amended by redesignating the second subsection (k) as subsection (l).

And the Senate agree to the same.

Amendment numbered 103:

That the House recede from its disagreement to the amendment of the Senate numbered 103, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

TITLE VIII—GENERAL PROVISIONS

SEC. 801. Notwithstanding the provisions of this or any other Act, the Administration may establish the National Partnership Council with interagency assistance from the Office of Personnel Management, the Office of Management and Budget, and the Federal Labor Relations Authority, subject to authorization.

SEC. 802. Not to exceed fifty percentum of unobligated balances remaining available at the end of fiscal year 1994 from appropriations made available for salaries and expenses made for one fiscal year in this Act, shall remain available through September 30, 1995 for each such account for such purposes and in such amounts as approved in advance by the House and Senate Committees on Appropriations: Provided, That not to exceed two percentum of the funds so carried over may be used to pay cash awards to employees, as authorized by law, and not to exceed three percentum of the funds may be used for employee training programs.

SEC. 803. Notwithstanding any other provision of law, the Centers for Disease Control (CDC) laboratory project authorized by Public Law 100–202, may be sited on the "new" campus in the Atlanta, Georgia area authorized by Public Law 102–393.

SEC. 804. Part of the site to be utilized for the new U.S. Courthouse in Montgomery, Alabama, is owned and occupied by Troy State University which is under a consent decree with the Department of Justice that severely limits its geographic location. Therefore, notwithstanding any other provision of law, the Administrator of General Services is authorized to pay replacement costs for the site and improvements to be acquired.

And on page 67 of the House enrolled bill, H.R. 2403, after the words "South Vietnam," on line 7, insert "the countries of the former Soviet Union," and on page 67, line 11, of the House enrolled bill, H.R. 2403, strike all beginning with "(6)" down through and including "1990" on line 13, and insert in lieu thereof, "(6) nationals of the People's Republic of China that qualify for adjustment of status pursuant to the Chinese Student Protection Act of 1992"

And the Senate agree to the same.

STENY H. HOYER,
PETER J. VISCLOSKY,
GEORGE (BUDDY) DARDEN,
JOHN W. OLVER,
TOM BEVILL,
MARTIN O. SABO,
WILLIAM H. NATCHER,
JIM LIGHTFOOT
(except amendment 36),
FRANK R. WOLF
(except amendment 36),
JOSEPH M. MCDADE
(except amendment 36),
Managers on the Part of the House.

DENNIS DECONCINI,
BARBARA A. MIKULSKI,
J. ROBERT KERREY,
ROBERT C. BYRD,
CHRISTOPHER S. BOND,
AL D'AMATO,
MARK O. HATFIELD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2403) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President and funds appropriated to the President, and certain independent agencies for the fiscal year ending September 30, 1994, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE I—DEPARTMENT OF THE TREASURY

DEPARTMENTAL OFFICES

SALARIES AND EXPENSES

Amendment No. 1: Makes available not less than $6,352,000 for enforcement activities instead of $6,902,000 as proposed by the Senate and deletes other language proposed by the Senate. It also makes available until expended, $1,500,000 for systems modernization.

The conferees have provided an increase of $553,000 and 6 FTEs for the Office of Enforcement activities in fiscal year 1994 to be allocated by the Assistant Secretary for Enforcement. The $6,352,000 provided will support an FTE level of 84 for this Office in fiscal year 1994.

PRESIDENT'S WORKFORCE REDUCTIONS

The President has committed to reducing the federal workforce by 252,000 full time employee equivalents (FTE) over the next five years. In general, the conferees support the President's effort in this regard and have made every effort to remove FTE floors which have appeared in the bill in the past. This is done in the spirit of providing the President and agency managers with maximum flexibility in the management of the federal workforce.

In lieu of bill language, the managers have included statements citing funding to support FTE levels for various agencies. The conferees note that these levels are not statutorily binding and that these levels are not intended to act as either FTE floors or ceilings but merely to explain what FTE levels could be achieved through the funding levels provided. The conferees further note, however, that the reductions mandated through the Presidential Executive Orders should not adversely affect law enforcement functions of the agencies funded in this Act.

Amendment No. 2: Appropriates $105,150,000 for salaries and expenses instead of $104,597,000 as proposed by the House and $105,700,000 as proposed by the Senate.

The conferees have provided total funding of $105,150,000 for Departmental Office for fiscal year 1994. Of this amount, an increase of $553,000 has been provided to support enhanced Office of Enforcement activities.

ALASKA NATIVE CORPORATIONS

Last year Section 7617 of the Conference Report to H.R. 11 contained a procedural provision granting Alaska Native Corporations standing to contest deficiencies in so-called net operating loss transactions (NOL) expressly permitted by law. This provision protected the rights of all of the parties—the Alaska Native Corporations, the corporations which purchased the NOL, and the government. For reasons unrelated to the merits of the standing provision, H.R. 11 was vetoed by the President on November 5, 1992. Currently, Alaska Native Corporations are in, or are moving to, the final Internal Revenue Service administrative stage—the so-called appeals process. The conferees urge that after all administrative appeals are exhausted, the Secretary refrain from issuing a deficiency notice based on a net operating loss transaction to a taxpayer other than an Alaska Native Corporation, until Congress has had the opportunity to again consider the standing provision. However, the conferees do not intend that the Secretary delay the issuance of a deficiency notice where the taxpayer declines to execute an appropriate waiver of the statute of limitations.

RESTRUCTURING OF IRS AND CUSTOMS SERVICE

The ongoing service centers and district offices studies may well have an impact on personnel levels at both local and national levels of the Internal Revenue Service (IRS). The conferees therefore direct the Commissioner of IRS to incorporate a master plan for personnel actions and human resource planning into any recommendation approved by the Secretary of the Treasury for the restructuring of IRS operations.

The conferees are aware that Tax Systems Modernization will alter existing allocations of human resources and will require significant planning for training and retraining so that displacements of existing employees can be kept to an absolute minimum. The conferees believe that if properly managed, attrition and training can prepare people whose jobs may be eliminated for compliance, enforcement, and service positions that become available. In addition, the Department should work with the Internal Revenue Service and employee organizations to develop priority hiring plans within IRS to protect existing employees.

The conferees are also concerned about the current regional and district structure of the Customs Service. Significant savings in both financial and human resources may be available.

The conferees direct the IRS and the Customs Service to submit a plan for restructuring the IRS and Customs Service including priority placement and retraining details, and submit this plan no later than March 1, 1994 to the Committees on Appropriations.

Japanese Financial Markets Study

The Secretary of the Department of the Treasury shall conduct, and report to Congress no later than one year following the date of enactment of this Act, a study of the structures, operations, practices and regulations of Japan's financial markets and their implications for the U.S. economy. In conducting this study, the Secretary shall consider with regard to Japan the structures, operations, practices, trends and regulations of Japan's securities markets, the Japanese banking system and the Japanese real estate market, and corporate governance in Japan, stable and cross shareholding, the adequacy of disclosure requirements, and the adequacy of legal relief available to foreign investors in Japan. With regard to economic effects on the United States, the Secretary shall consider the volume and nature of the United States investments in Japan, the role of Japanese finance internationally and in the United States, and the impact of Japanese finance upon the United States macroeconomic policies.

Office of Inspector General

SALARIES AND EXPENSES

Amendment No. 3: Restores language proposed by the House and stricken by the Senate making available $300,000 until expended for the Inspector General Auditor Training Institute.

Management Control Systems

The conferees encourage all Inspectors General to promote the efficiency and integrity of government programs they oversee, with the goal of making programs work better. The "Inspectors General Auditor Training Institute" which operates under the Inspector General's office in the Department of Treasury, offers Inspectors General an opportunity to enhance their skills and broaden their focus. In addition to making certain that agencies are in compliance with Federal rules and regulations, the Inspectors General can help improve management by stressing the importance of efficient operations and in assisting in the evaluation of management systems. The conferees believe the Inspectors General should always be exploring ways to enhance their role in the evaluation of Federal agencies.

Treasury Forfeiture Fund

Amendment No. 4: Appropriates $32,500,000 for salaries and expenses instead of $14,770,000 as proposed by the House and $50,000,000 as proposed by the Senate.

Federal Law Enforcement Training Center

SALARIES AND EXPENSES

Amendment No. 5: Inserts language proposed by the Senate regarding reimbursement of funds from agencies receiving training at the Federal Law Enforcement Training Center.

Amendment No. 6: Appropriates $47,445,000 for salaries and expenses instead of $47,195,000 as proposed by the House and $47,695,000 as proposed by the Senate.

GANG RESISTANCE EDUCATION AND TRAINING PROGRAM

The conferees have provided an increase of $250,000 to support enhanced training activities for the Gang Resistance Education and Training (GREAT) program.

ACQUISITION, CONSTRUCTION, IMPROVEMENTS, AND RELATED EXPENSES

Amendment No. 7: Appropriates $12,712,000 for acquisition, construction, improvements, and related expenses as proposed by the Senate instead of $7,712,000 as proposed by the House.

DAVIS-MONTHAN AIR FORCE BASE

The conferees have provided an increase of $7,712,000 for new construction activities at the Davis-Monthan Air Force Base Training facility in fiscal year 1994. The funds provided shall support the following projects:

Nine classrooms	$1,475,000
Administrative support	950,000
Driving ranges	465,000
Support facility	825,000
Student support facilities	1,025,000
Burn building	1,000,000

CONSTRUCTION OF BURN BUILDING

The conferees have included $1,000,000 for the construction of a building at the Federal Law Enforcement Training Center (FLETC) to be used to train personnel in arson investigation techniques. FLETC has been directed to submit its design plans and estimated cost data by February 1, 1994. The conferees agree that the training to be provided is for Federal, State and local, and private security officials engaged in the investigation and detection of arson.

FINANCIAL MANAGEMENT SERVICE

SALARIES AND EXPENSES

Amendment No. 8: Makes available $11,539,000 until expended for systems modernization initiatives as proposed by the Senate instead of $9,748,000 as proposed by the House.

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

SALARIES AND EXPENSES

Amendment No. 9: Appropriates $366,446,000 for salaries and expenses instead of $364,245,000 as proposed by the House and $368,046,000 as proposed by the Senate and inserts language proposed by the Senate which authorizes the use of $100,000 for hosting certain conferences.

The conferees have provided an increase of $1,900,000 and 30 FTEs for the Bureau of Alcohol, Tobacco and Firearms in fiscal year 1994. These increased funds shall be used to restore 30 law enforcement positions proposed for reduction and $300,000 for the Phoenix Police Department to support national expansion of the GREAT program.

Amendment No. 10: Deletes a provision proposed by the House and stricken by the Senate which provided that $5,000,000 be retained and used for the purpose of off-setting costs of the Bureau's Compliance Alcohol Program.

Amendment No. 11: Inserts a provision proposed by the Senate which provides that the Bureau of Alcohol, Tobacco and Firearms may investigate and act upon applications filed by corporations (but not for individuals) for relief from Federal Firearms disabilities.

Amendment No. 12: Deletes language proposed by the Senate which would have mandated a minimum level of positions.

The conferees have provided $366,446,000 for ATF to support an FTE level of 4,231, of which 1,410 FTEs shall support the Armed Career Criminal Apprehension Program.

Amendment No. 13: Modifies a provision proposed by the Senate prohibiting the use of funds to implement any reorganization of the ATF or transfer of the Bureau's functions, missions, or activities to other Agencies or Departments.

U.S. Customs Service

SALARIES AND EXPENSES

Amendment No. 14: Appropriates $1,350,668,000 for salaries and expenses instead of $1,311,819,000 as proposed by the House and $1,363,668,000 as proposed by the Senate.

The conferees have provided an increase of $38,849,000 for the U.S. Customs Service in fiscal year 1994. Of this amount, $31,801,000 is provided to restore the 642 FTEs proposed for reduction in fiscal year 1994, $5,048,000 to restore the excess cut in administrative activities, and $2,000,000 for enhanced commercial operations activities.

SAN LUIS COMMERCIAL BORDER CROSSING

The conferees are concerned about the dangerous traffic situation which has developed in San Luis, Arizona. The current configuration in San Luis, Rio Colorado, and San Luis, Arizona requires commercial traffic to cross through non-commercial vehicular traffic to enter the U.S. Customs inspection area. In an attempt to resolve this problem the local community and the government of Mexico have agreed upon a site approximately 7 kilometers to the east of San Luis for a new commercial crossing to be constructed on both sides of the border. The conferees direct GSA to take a serious look at constructing a commercial port on the U.S. side to make the San Luis port more efficient and reduce traffic in this increasingly congested area. More importantly commercial traffic would have a more direct and less time-consuming route to Interstates 8 and 10 by utilizing Highway 2 which is adjacent to the proposed commercial crossing. The conferees expect GSA to report

back on the feasibility of this project by no later than February 15, 1994.

WORLD CUP USA 1994

In view of the estimated 1.5 million international visitors expected for the games, the conferees direct the Customs Service to designate as soon as possible a U.S. Customs officer, expert in customs arrival and clearance processes, to work with the government relations staff of the organizing committee at its Washington, D.C. metropolitan offices to assist in coordination and expedition of customs issues at the nine venues.

COMMISSIONER OF CUSTOMS

The conferees are aware that a problem has emerged as part of the implementation of P.L. 101–207 (92 Statute 1154). The purpose of P.L. 101–207 was to designate the Commissioner of Customs as a position requiring Senate confirmation. This legislation has inadvertently resulted in the present Commissioner receiving a salary less than that of his predecessors who were simply appointed by the Secretary of the Treasury and were not confirmed by the Senate. This inadvertence has led to an unintended pay disparity between the Commissioner and other similar Senate confirmed positions. The Commissioner of Customs is delegated with some of the most broad ranging duties and responsibilities given to any public servant by both the President and the United States Congress. Therefore, it is the intent of the conferees that the appropriate actions be taken to restore the salary of the Commissioner of Customs to its correct level, to that of his predecessors. This Conference Report contains the necessary technical correction in Title 5, United States Code in amendment numbered 35.

Amendment No. 15: Inserts language proposed by the Senate which makes available until expended $4,000,000 for research.

Amendment No. 16: Deletes language proposed by the Senate which mandates minimum levels for positions.

The conferees have provided a funding level of $1,350,668,000 for salaries and expenses in fiscal year 1994. This amount will support an FTE level of 17,841, of which 960 FTEs shall be available to support the Customs Air Interdiction Program.

OPERATION AND MAINTENANCE, AIR AND MARINE INTERDICTION PROGRAMS

Amendment No. 17: Inserts language proposed by the Senate which authorizes the use of Air and Marine Interdiction funds for drug "demand reduction" programs.

Amendment No. 18: Appropriates $47,863,000 for operation and maintenance, air and marine interdiction programs as proposed by the Senate instead of $46,063,000 as proposed by the House.

RADAR COVERAGE

The conferees are concerned that gaps known to exist in radar coverage on the southern border of the United States impact the effectiveness of drug interdiction efforts. Because of this concern,

the conferees direct that a plan be prepared and reported to the Committees on Appropriations of the House and Senate identifying approaches to fill these gaps utilizing existing technology and available ground-based radars that have been demonstrated in actual southwestern border tests and offer lowest-cost operations through unmanned operation.

OPERATIONS AND MAINTENANCE, CUSTOMS P-3 DRUG INTERDICTION PROGRAM

Amendment No. 19: Deletes language proposed by the House and stricken by the Senate which limited the P-3 aircraft to "defense related" drug interdiction purposes.

CUSTOMS FACILITIES, CONSTRUCTION, IMPROVEMENTS AND RELATED EXPENSES

Amendment No. 20: Modifies language proposed by the Senate which provides funds to the highest priority Customs air facility requirements.

The conferees have provided $5,000,000 to support high priority Customs air interdiction facility construction requirements in fiscal year 1994.

BUREAU OF THE PUBLIC DEBT

ADMINISTERING THE PUBLIC DEBT

Amendment No. 21: Appropriates $187,209,000 for administering the public debt as proposed by the Senate instead of $189,209,000 as proposed by the House.

INTERNAL REVENUE SERVICE

ADMINISTRATION AND MANAGEMENT

Amendment No. 22: Deletes language proposed by the House and stricken by the Senate which made available $500,000 for research.

PROCESSING TAX RETURNS AND ASSISTANCE

Amendment No. 23: Deletes language proposed by the House and stricken by the Senate which makes available $1,000,000 for research.

TAX LAW ENFORCEMENT

Amendment No. 24: Modifies a provision proposed by the Senate and appropriates $4,007,962,000 for tax law enforcement instead of $4,043,281,000 as proposed by the Senate. It also makes available until expended $1,000,000 for research and mandates that not less than $350,000,000 be available for tax fraud investigations.

INFORMATION SYSTEMS

Amendment No. 25: Appropriates $1,471,448,000 for information systems instead of $1,402,629,000 as proposed by the House and $1,487,722,000 as proposed by the Senate.

Amendment No. 26: Restores language proposed by the House and stricken by the Senate which mandates that the IRS report to the Committees on Appropriations on the implementation of Tax Systems Modernization prior to obligating funds.

U.S. Secret Service

SALARIES AND EXPENSES

Amendment No. 27: Appropriates $461,931,000 for salaries and expenses as proposed by the Senate instead of $457,360,000 as proposed by the House.

The conferees have provided an increase of $4,571,000 for the Secret Service in fiscal year 1994. These additional funds are provided to restore 69 FTEs proposed for reduction in fiscal year 1994.

WORLD CUP USA 1994

The conferees direct the Service to prepare plans and allocate resources as necessary to provide for the security needs of the various foreign heads of State and officials participating in the activities associated with the World Cup.

General Provisions—Department of the Treasury

Amendment No. 28: Restores a provision proposed by the House and stricken by the Senate mandating that the IRS identify efficiency savings and nonrecur the amount of the savings from the IRS budget base.

Amendment No. 29: Modifies a provision proposed by the Senate regarding transfers of end-of-year unobligated balances in the Treasury Forfeiture Fund for Federal law enforcement activities.

Amendment No. 30: Deletes a provision proposed by the House and stricken by the Senate.

The conferees understand that the Bureau of Engraving and Printing will will maintain and utilize the currency production capacity of its Washington, D.C. facility at a level which at a minimum equals its current 5 day, 3 shift per day output of approximately 5.2 billion notes. The Federal Reserve System requirements exceed that level by an amount which will enable the Bureau to also maintain and utilize an operating expansion and emergency back-up capacity at its Fort Worth, Texas facility. If production requirements fall below that level the Bureau may, upon advance notice to the House and Senate Appropriations Committees, reallocate production between the two facilities in a way which best utilizes the capacity of each and preserves the employment security of the Bureau workforce.

Amendment No. 31: Deletes a provision proposed by the House and stricken by the Senate.

If necessary to retain employees with specialized skills who are serving on temporary appointments, the Bureau of Engraving and Printing may extend such appointments on an annual basis beyond four years.

Amendment No. 32: Deletes a provision proposed by the House and stricken by the Senate.

In the event of staffing reductions due to a reduction in work requirements, the area of consideration for any reduction-in-force to be effected shall include the Washington, D.C. facility and the Ft. Worth, Texas facility. Lists of competing employees at each facility shall be combined together, and bumping, retreat and reassignment rights of employees at the same competitive level shall be governed by this combined list. In order to insure uniformity in administration, the Bureau shall adopt this policy by a formal issuance. This policy shall prevail with regard to all represented bargaining units unless one or more unions specifically and in writing agree to another policy or arrangement on behalf of the employees that any such organizations(s) represents.

Amendment No. 33: Inserts and changes the section number of a provision proposed by the Senate mandating that the Secretary of Treasury establish an Office of Undersecretary for Enforcement.

Amendment No. 34: Modifies a provision proposed by the Senate regarding the exemption of law enforcement positions from Executive Order 12839.

Amendment No. 34: Modifies a provision proposed by the Senate mandating the IRS institute policies and procedures which safeguard the confidentiality of taxpayer information.

It also inserts a provision which modifies Title 5 regarding the Commissioner of Customs.

It also inserts a provision providing for the transfer of Customs aircraft and establishes funding levels for enforcement of the Federal Alcohol Administration Act.

TITLE III—EXECUTIVE OFFICE OF THE PRESIDENT AND FUNDS APPROPRIATED TO THE PRESIDENT

National Performance Review

The conferees believe the Vice President's report of the National Performance Review is a significant and important document and strongly share the goal of "creating a government that works better and costs less."

The conferees expect Departments and Agencies within this bill to review the recommendations of this report and take immediate steps to achieve a government that works better and costs less and be prepared to work with the House and Senate Committees on Appropriations during next year's hearings on efforts to accomplish this goal.

The White House Office

SALARIES AND EXPENSES

Amendment No. 36: Appropriates $38,754,000 for salaries and expenses as proposed by the Senate instead of $38,914,000 as proposed by the House.

National Security Council

SALARIES AND EXPENSES

Amendment No. 37: Appropriates $6,648,000 for salaries and expenses as proposed by the House instead of $8,209,000 as proposed by the Senate

Information Security Oversight Office

The conferees have not transferred funds from the General Services Administration (GSA) to the National Security Council (NSC) for the Information Security Oversight Office (ISOO) in fiscal year 1994 as recommended by the Senate. ISOO is funded in GSA. The conferees remain concerned, however, that GSA is not the proper agency under which to carry out the responsibilities of this Office since ISOO takes its direction and guidance from the NSC, not GSA. The conferees understand that the NSC is currently reviewing the proper placement of ISOO and should be releasing the results of this evaluation late this year. The conferees direct NSC to provide the results of that review to the appropriate committees of Congress. The conferees further direct NSC to request funding and the required positions to support ISOO's mission in the appropriate agency account as reflected in the review in the fiscal year 1995 budget submission.

Office of Management and Budget

SALARIES AND EXPENSES

Amendment No. 38: Appropriates $56,539,000 for salaries and expenses as proposed by the House instead of $53,481,000 as proposed by the Senate.

Paperwork Reduction Goal for Federal Agencies

The conferees commend the Administration for its goal of reducing the internal federal regulatory burden by 50 percent. In addition to the stated goals of the Vice President's National Performance Review, the conferees urge agencies within the scope of this Act to adopt a goal of reducing the federal paperwork burden by 50 percent, where possible, both for internal agency paperwork and for paperwork required to businesses or individuals who conduct business with the federal government. Agencies may determine how best to meet that goal.

Office of Federal Procurement Policy

SALARIES AND EXPENSES

Amendment No. 39: Deletes language proposed by the Senate which provided funding for the Office of Federal Procurement Policy as a separate account. The funding for this Office is provided in the appropriation to the Office of Management and Budget.

Office of National Drug Control Policy

SALARIES AND EXPENSES

Amendment No. 40: Appropriates $11,687,000 for salaries and expenses as proposed by the Senate instead of $5,800,000 as proposed by the House and sets, at 40, the level of positions for ONDCP.

The conferees have provided an increase of $5,887,000 for the Office of National Drug Control Policy in fiscal year 1994. These additional funds are provided to support 40 positions in fiscal year 1994, an increase of 15 above the amount requested.

The conferees are agreed, however, that total employment in the Executive Office of the President shall not exceed the 1,044 total positions requested by the President. The conferees expect the President to make reductions in other Executive Office of the President agencies to support the 15 FTE increase for ONDCP as provided for in the amendment. The conferees agree that this total level of 1,044 positions will fluctuate throughout the year as the President manages day-to-day operations at the White House.

Federal Drug Control Programs

HIGH-INTENSITY DRUG TRAFFICKING AREAS PROGRAMS

Amendment No. 41: Inserts a provision proposed by the Senate which provides $43,000,000 for State and local entities and $43,000,000 for Federal agencies. Deletes a provision proposed by the House which provided for a different allocation of funding.

Special Forfeiture Fund

(INCLUDING TRANSFER OF FUNDS)

Amendment No. 42: Modifies a provision proposed by the House and Senate regarding the allocation of funds from the Special Forfeiture Fund.

TITLE IV—INDPENDENT AGENCIES

Administrative Conference of the United States

SALARIES AND EXPENSES

Amendment No. 43: Appropriates $1,800,000 for salaries and expenses as proposed by the Senate. The House provided no funds for the Conference.

Deletes language proposed by the Senate which reduced the amount appropriated to each discretionary account by 1.478 percent.

Modifies language proposed by the Senate concerning remanfactued and recycled toner cartridges.

TONER CARTRIDGES

The conferees have agreed to amend the Senate language as adopted by the Senate in amendment numbered 43 and to delete the Senate language adopted by the Senate in amendment numbered 100.

In amending the language, the conferees have inserted language to ensure that if an agency decides to give preference, that small businesses continue to compete only with each other for GSA's remanufactured toner cartridge solicitations. The conferees note that this action simply reconfirms current Federal Acquisitions Regulation (FAR) requirements. FAR provision 19.502–2, requires that when purchasing certain items, like toner cartridges, if two or more small businesses can meet the specifications which include price and quantity availability, GSA must "set aside" the procurement for small businesses.

The action of the conferees will ensure that the recycled toner cartridge solicitations will be open to all qualified bidders. Furthermore, the conferees set forth guidelines under which newly manufactured cartridges may be purchased.

Finally, the conferees have inserted language to ensure that the provision will not affect current law with respect to organizations for the Blind or Other Severely Handicapped (NIB/NISH).

CITIZENS' COMMISSION ON PUBLIC SERVICE AND COMPENSATION

SALARIES AND EXPENSES

(RESCISSION)

Amendment No. 44: Inserts a provision proposed by the Senate rescinding $250,000 of the funds made available in the fiscal year 1993 appropriation.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

Amendment No. 45: Appropriates $1,000,000 for salaries and expenses as proposed by the Senate. The House provided no funds for this Commission.

GENERAL SERVICES ADMINISTRATION

FEDERAL BUILDINGS FUND

Amendment No. 46: Inserts a provision proposed by the Senate which appropriates funds to the Federal Buildings Fund.

REVIEW OF FEDERAL BUILDING CONSTRUCTION

On September 16, 1993, the Administrator of the General Services Administration (GSA) announced a comprehensive review of the public buildings process beginning immediately and lasting from 3 to 6 months. The Administrator has stated that the intent of this review is to produce cost savings wherever possible.

The conferees concur in the Administrator's decision to review these projects on the basis of merit and cost but are concerned that the practical effect of the construction moratorium is that budget authority previously provided for 188 different projects is being withheld from obligation.

As required by the Impoundment Control Act, the General Accounting Office (GAO) is currently reviewing the Administrator's decision to withhold these funds to determine whether such action

is reportable under the Impoundment Control Act. The conferees look forward to the Comptroller General's report and will rely on this decision.

If in the report, GAO determines that a deferral is required, the conferees direct the Administrator of GSA and the Comptroller General to follow existing deferral reporting procedures. The Administrator is also urged to expeditiously complete a review of these projects so as to not cause any unnecessary delays, costs or project slippage.

ANALYSIS OF FEDERAL BUILDING CONSTRUCTION

The conferees agree that the Federal construction projects are subject to review by the General Services Administration (GSA). The conferees direct the Administrator of the GSA to carefully review federal building construction projects to ensure that they meet the requirements of the Federal government. The GSA should conduct an analysis as to the need for these buildings including an assessment of the requirements of the agencies which will be housed in these facilities. The GSA should also carefully review each project to insure that it is not only necessary but is the appropriate size and design for the government entities to be housed there. Finally the conferees direct GSA to insure that the costs are fully justified for each project.

The Administrator is directed to report to the House and Senate Committees on Appropriations on the results of this analysis.

ACCESS TO RESOLUTION TRUST CORPORATION PROPERTIES

The conferees understand that legislation has been proposed to improve the access of GSA to Resolution Trust Corporation (RTC) properties for use by the Federal government. The conferees expect the Administrator of GSA to work with the RTC to identify properties which could be available for meeting the requirements of Federal agencies.

MANAGEMENT OF FEDERAL GOVERNMENT REAL ESTATE

The conferees agree with the recommendation of the Vice President's National Performance Review that the Public Buildings Service become a provider of choice. While the conferees recognize that the Federal Buildings Fund rent rates may appear cumbersome because they are structured to provide a margin of income for capital expenditures for construction of a new facilities and major repairs, the conferees agree that by involving customer agencies in the decision making and by increasing competition, the taxpayers will benefit through lower costs.

The conferees are concerned, however, that should the government decentralize the management of the government's real estate assets, the benefit of centralized decision making will not be realized. Recent investigations by the General Accounting Office have shown that other Federal entities cannot prioritize their own requirements. Decentralizing the decision making process would only yield a Federal budget which does not prioritize all of the needs of the government.

The conferees agree that the General Services Administration should be the agency charged with managing all government assets to optimize the highest rate of return. The conferees look forward to the establishment of GSA as the government wide asset manager effectively managing the government's vast portfolio of real property holdings.

BUILDING DELEGATION PROGRAM

The conferees are aware that the General Services Administration (GSA) has implemented a very successful Building Delegation Program. Under this program, GSA has delegated authority for Real Property management functions to Federal agencies which are single tenants in selected Government-owned and leased buildings. The GSA budgets for operational and administrative costs directly within the Federal Buildings Fund and tenant agencies continue to budget for and pay full rent to GSA. Each year GSA returns funding to each participating agency for operation of these buildings through individual allocation accounts. However, the program has become a cumbersome, ineffective and costly method for GSA to manage. Therefore, the conferees direct GSA and the Office of Management and Budget to include necessary operating funds for buildings delegation in each agency's budget for fiscal year 1995, rather than budgeting for these requirements in the Federal Buildings Fund.

Amendment No. 47: Modifies a provision proposed by the Senate appropriating $288,486,000 into the Fund.

Amendment No. 48: Establishes an aggregate amount of $5,251,117,306 in the Federal Buildings Fund instead of $5,185,611,000 as proposed by the House and $5,253,877,000 as proposed by the Senate.

Amendment No. 49: Makes available $925,027,306 for construction instead of $820,476,000 as proposed by the House and $933,787,000 as proposed by the Senate.

Amendment No. 50: Deletes language proposed by the House and modifies language proposed by the Senate which provides funding related to the construction of certain buildings and facilities.

FEDERAL COURTHOUSE, AUGUSTA, GEORGIA

The conferees have agreed to fund the $1,000,000 identified by the Senate for the repairs and renovations to the Courthouse in Augusta, Georgia, from funds available in the construction account.

FEDERAL CENTER, ROCHESTER, NEW YORK

The conferees have included an additional $5,000,000 to complete the federal center in Rochester, New York, which was initially funded in the Treasury, Postal Service, and General Government Appropriations Act, 1991 (P.L. 101–509).

Amendment No. 51: Modifies language proposed by the House and stricken by the Senate providing that funds be available for four flexiplace work telecommuting center projects located in Southern Maryland, northwestern Virginia, Hagerstown, Maryland,

and Fredericksburg, Virginia and increases the funding level to $6,000,000.

Amendment No. 52: Rescinds $185,344,000 as proposed by the Senate instead of $107,781,000 as proposed by the House.

Amendment No. 53: Inserts a provision proposed by the Senate providing that $1,500,000 made available in a previous fiscal year for Hilo, Hawaii shall be available to a public entity in Hawaii to construct government facilities.

Amendment No. 54: Appropriates $523,782,000 for repairs and alterations instead of $546,682,000 as proposed by the House and $516,782,000 as proposed by the Senate.

Amendment No. 55: Restores a provision proposed by the House and stricken by the Senate modified to make available $7,000,000 for energy retrofit projects.

Amendment No. 56: Restores a provision proposed by the House which provides that $6,000,000 may be used to procure and install phosphoric acid fuel cells in GSA installations.

Amendment No. 57: Provides $6,800,000 for certain capital improvements of United States-Mexico border facilities as proposed by the Senate.

LUKEVILLE, ARIZONA

The conferees urge the U.S. Customs Service to provide 24 hour emergency service at the border station in Lukeville, Arizona. It is imperative that this facility be prepared for emergencies when it is closed. The conferees understand that Customs intends to place signs at this facility providing instruction on emergency procedures and urges Customs to do so at the earliest possible date.

Amendment No. 58: Makes available $118,108,000 for installment acquisition payments including payment on purchase contracts as proposed by the House instead of $119,108,000 as proposed by the Senate.

Amendment No. 59: Makes available $2,117,421,000 for rental space as proposed by the Senate instead of $2,124,373,000 as proposed by the House.

Amendment No. 60: Makes available $1,226,085,000 for real property operations as proposed by the Senate instead of $1,231,085,000 as proposed by the House.

Amendment No. 61: Makes available $184,081,000 for design and construction services as proposed by the Senate instead of $188,274,000 as proposed by the House.

Amendment No. 62: Deletes a provision proposed by the House and stricken by the Senate which prohibited expenditures without prior authorization for certain projects.

Amendment No. 63: Modifies a provision proposed by the House and stricken by the Senate which authorizes the Department of Agriculture to provide funds for the construction of a facility for a nongovernmental entity.

Amendment No. 64: Modifies language proposed by the Senate which provides for approval of construction projects by legislative Committees prior to funds becoming available.

Amendment No. 65: Establishes a limitation of $5,251,117,306 for the Federal Buildings Fund instead of $5,185,611,000 as proposed by the House and $5,253,877,000 as proposed by the Senate.

Federal Supply Service

OPERATING EXPENSES

Amendment No. 66: Makes available $43,420,000 for operating expenses as proposed by the Senate instead of $55,804,000 as proposed by the House.

Establishing a Reimbursable Federal Supply Service

The conferees note that the House included report language on establishing a reimbursable Federal Supply Service (FSS), requesting that GSA initiate a management review of the FSS to determine the feasibility of making it a totally reimbursable activity in fiscal year 1995. The conferees agree that the FSS should work with the Office of Management and Budget to implement a fiscal year 1995 policy to include all FSS costs in the rates charged to customers. Furthermore, the conferees agree that the Federal agencies should be allowed a choice of purchasing from the FSS or from the commercial sector. This would provide each agency the opportunity to obtain items in the most cost beneficial manner. The General Accounting Office should review this arrangement and report on the effect such as change would have on the Federal government.

Related to the issue of reimbursable funding, the conferees are aware that FSS has programs which provide services to customers, such as contracts for agencies' use where agencies' payments for these services do not flow through the General Supply Fund. Until the changes recommended by the conferees are made, FSS is unable to recover its costs directly from customers through an overhead charge on the cost of goods or services provided through such programs. However, there may be instances when the provided service generates receipts not directly related to the cost of service. Such receipts should be available to fund the cost of creating and providing the services which have in fact generated the revenue. The conferees direct the Administrator to keep the Committees informed as such funding is identified and becomes available. During the transition from appropriated to reimbursable funding, funds appropriated but not longer necessary should not be obligated.

POLLUTION ABATEMENT TEST

The Energy Policy Act of 1992 calls on the Secretary of Energy in conjunction with industry and federal agencies to conduct a study on diesel engine combustion and fuels and lubricants to reduce emissions of oxides of nitrogen and particulates. To assist in the conduct of this study, the conferees direct the Administrator of GSA to consider developing a program involving GSA-fleet vehicles, in particular trucks and buses, to test diesel fuel additives as a means to reduce emissions and particulates.

WORLD CUP USA 1994

The conferees direct GSA to continue to provide available secure storage and office space, equipment, and other logistical support on a temporary basis to the World Cup organizers in the nine venues and to make available temporary exhibition space in U.S.

Government buildings for international cultural and artistic events associated with World Cup USA 1994.

INFORMATION RESOURCES MANAGEMENT SERVICE

OPERATING EXPENSES

Amendment No. 67: Appropriates $45,675,000 as proposed by the House instead of $44,730,000 as proposed by the Senate and deletes a provision proposed by the House which would have prohibited the use of funds for the Information Security Oversight Office.

MANAGEMENT RESEARCH SUPPORT

The conferees are supportive of the Administration's efforts to reinvent government and are interested in assuring that GSA has the benefit of the most advanced thinking and research in business management, procurement policy, computer applications and other management issues of concern to the Federal Government. For this reason, the conferees recommend that GSA solicit proposals from institutions of higher education for the purpose of determining whether or not GSA should establish university-based research centers to assist in developing improved methods of management, procurement policy, and computer and software applications for the Federal Government.

INFORMATION SECURITY OVERSIGHT OFFICE

The conferees have agreed to remove the restrictive language which prohibited the expenditure of funds for the Information Security Oversight Office (ISOO), as proposed by the House. Furthermore, the conferees have agreed not to move the ISOO to the National Security Council (NSC), as proposed by the Senate. The outcome of both of these actions will be to maintain the ISOO within the General Services Administration's Information Resources Management Service (IRMS).

The House action which eliminated funding for the ISOO was based on the Office's actions which included the issuing of a draft directive undermining current federal procurement regulations. This draft directive was issued without the approval of the Administrator of General Services, despite the implications that such a regulation would have on GSA operations. Despite the House concerns, the conferees are aware that the original charter of the ISOO, the implementation of security standards for government equipment, needs to be accomplished.

However, the conferees agree that the GSA should exert greater management control of ISOO. While it is not the intention of the conferees to replace the direction provided by NSC, the conferees agree that the Administrator of GSA should provide significant oversight of ISOO's operations. It is the conferees' intent to ensure that the mistakes of the past are not repeated.

General Services Administration—General Provisions

Amendment No. 68: Deletes a provision proposed by the House and stricken by the Senate regarding the Foley Square Federal Building.

Amendment No. 69: Inserts a provision proposed by the Senate providing guidelines for the use of unobligated balances associated with operating expenses and salaries and expenses that have been unobligated at the end of the fifth fiscal year after the fiscal year for which the funds were appropriated.

Amendment No. 70: Inserts a provision proposed by the Senate amending Section 204 of the Federal Property and Administrative Services Act of 1949 by adding a subsection which provides authority for the Administrator of GSA to retain proceeds from the sale of personal property in the amount necessary to recover, to the extent practicable, costs incurred by the GSA (or its agent) in conducting such sales.

Amendment No. 71: Modifies language proposed by the Senate regarding a property exchange in Tucson, Arizona for a Federal Courthouse to ensure that the property is of comparable value.

Amendment No. 72: Inserts a provision proposed by the Senate concerning prohibiting the disposal of land in the vicinity of Norfork Lake, Arkansas.

Amendment No. 73: Inserts a provision proposed by the Senate concerning prohibiting the disposal of land in the vicinity of Bull Shoals Lake, Arkansas.

Amendment No. 74: Deletes a provision proposed by the Senate regarding space in the City of Newark, New Jersey.

Victory Optical, Newark, New Jersey

Based upon a study, the GSA has determined there is a need for Federal office space in downtown Newark. The City of Newark has proposed a project in the Federal Square Campus Center at the Victory Optical site, One Victory Plaza, in Newark. The Victory Optical site is adjacent to and connected with three other major Federal buildings. As proposed by the City of Newark, the project would designate a minority controlled group to develop and operate the office building. The conferees direct the GSA to meet with Newark officials and give serious consideration to Newark's proposal to determine if it provides a cost effective solution to Newark's proposal to be cost prohibitive. The conferees encourage GSA to separately consider the Victory Optical site for government development.

Office of Personnel Management

SALARIES AND EXPENSES

Amendment No. 75: Deletes a provision proposed by the House and stricken by the Senate which provided funding for the National Advisory Council on Public Service.

DISEASE PREVENTION AND HEALTH PROMOTION

The conferees expect OPM to continue to collaborate with the Centers for Disease Control and Prevention of HHS to secure

health promotion and disease prevention and disease prevention expertise from academic institutions and further, to ensure that efforts are also made to develop innovative ways to utilize video communications technology. The conferees further direct OPM to utilize the unique expertise that has been demonstrated by the University of Arizona and the University of Hawaii under this program.

ENHANCING THE QUALITY OF WORKLIFE FOR FEDERAL EMPLOYEES

The conferees believe that the Office of Personnel Management (OPM) has indeed begun to address the issue of providing federal employees with a family-friendly workplace. At the same time the conferees are aware of the fact that many agencies are not fully advocating or implementing flexible work policies. It is in the best interest of all federal agencies to promote a family-friendly working environment especially during the period of "reinventing government". The government's ability to retain and attract the most qualified professionals will indeed depend highly on the employees' perception of "employee satisfaction" objectives of the federal government. The conferees believe OPM is in a position to take a stronger leadership role in addressing this issue since having established a Work and Family Program Center within its Personnel Systems and Oversight Group. The conferees conclude that OPM should direct federal agencies attention to the Center, and have it serve as the focal point for all federal work/family efforts.

OPM STUDY OF CHIROPRACTIC SERVICES

The conferees are concerned that the Office of Personnel Management has failed to proceed with a study, as directed in last year's bill, on how chiropractic services for treatment of back pain in federal employees could reduce cost in the Federal Employees Health Benefits Program. The conferees direct OPM to proceed with this important study.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

Amendment No. 76: Makes available $3,805,480,000 for government payment for annuitants, employees health benefits instead of $4,146,480,000 as proposed by the House and $3,458,480,000 as proposed by the Senate. The Administration has advised the conferees that this amount will fully fund the government's contribution for the Government Payment for Annuitants, Employees Health Benefits.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

OPERATING EXPENSES

Amendment No. 77: Appropriates $195,482,000 for operating expenses instead of $193,182,000 as proposed by the House and $196,482,000 as proposed by the Senate.

The conferees have provided a total of $195,482,000 for National Archives and Records Administration, an increase of $2,300,000 over the requested level. Of this amount, $500,000 shall

be made available to support planning activities on the renovation of the FDR Presidential Library in Hyde Park, New York, and $500,000 for a feasibility study on integrating the Archives collection into Internet and other on-line systems. The remaining increase shall be available to support a total funding level of $5,250,000 for NHPRC grants in fiscal year 1994.

Amendment No. 78: Makes available $5,250,000 for allocations and grants for historical publications and records instead of $4,000,000 as proposed by the House and $6,000,000 as proposed by the Senate.

U.S. Tax Court

Salaries and Expenses

Amendment No. 79: Appropriates $33,650,000 for salaries and expenses as proposed by the House instead of $35,350,000 as proposed by the Senate.

Title V—General Provisions

This Act

Amendment No. 80: Deletes a provision proposed by the House and stricken by the Senate which prohibited the expenditure of funds for administrative expenses to close the Federal Information Center in Sacramento, California.

Amendment No. 81: Restores language proposed by the House and stricken by the Senate prohibiting the withdrawal of the designation of Front Royal, Virginia as a Customs Service Port of Entry.

Amendment No. 82: Inserts and changes the section number of a provision proposed by the Senate requiring the absorption of pay increases within the levels appropriated by this Act. Also inserts a provision which prohibits a general, across-the-board pay increase for Federal employees.

Federal Employees General Pay Increase

The conferees opted to freeze the general pay increase due in January 1994 in order to implement locality-pay raises. The Administration requested a freeze for both increases, however the conferees believed that it was more important to implement locality pay on schedule. The conferees believe that the costs associated with implementing both raises would force federal agencies to furlough or fire employees.

Amendment No. 83: Deletes a provision proposed by the House and stricken by the Senate which concerned the use of funds to move the Internal Revenue Service's Automated Collection Unit in Manhattan, New York.

Automated Collection Unit, Manhattan, New York

The conferees are aware that the Internal Revenue Service intends to eliminate its Automated Collection Unit in Manhattan, New York. The conferees do not believe the decision to close the Unit has been fully substantiated. The conferees, therefore, urge

the Internal Revenue Service to explore all viable options to maintain the existing unit in New York until it can fully identify cost savings. Should such cost savings be identified and the Automated Collection Unit in Manhattan, New York is eliminated, the conferees urge the Internal Revenue Service to reassign every Manhattan Automated Collection Unit employee to a position at the same grade or pay level in the Manhattan commuting area. The Internal Revenue Service Commissioner has assured the conferees that this will be done and the conferees intend to monitor the situation to ensure that it is done.

Amendment No. 84: Restores language proposed by the House and stricken by the Senate authorizing the transfer of GSA property in Suitland, Maryland to the Washington Metropolitan Area Transit Authority.

Amendment No. 85: Inserts a provision proposed by the Senate requiring the Secretary of the Treasury to complete the Bureau of the Public Debt consolidation plan by a certain date.

Amendment No. 86: Restores language proposed by the House and deleted by the Senate regarding the conveyance of property to the State of Maryland from the General Services Administration.

Amendment No. 87: Restores language proposed by the House and stricken by the Senate. This provision prohibits the use of funds to provide any non-public mailing lists to any person or organization outside of the Federal Government.

Amendment No. 88: Modifies a provision proposed by the House and stricken by the Senate regarding the transfer of land to the City of Waltham, Massachusetts.

Amendment No. 89: Restores language proposed by the House and stricken by the Senate regarding the compliance with the "Buy American Act".

Amendment No. 90: Restores language proposed by the House and stricken by the Senate concerning the requirement regarding notice of American-made equipment and products.

Amendment No. 91: Restores language proposed by the House and stricken by the Senate concerning prohibition of contracts which use certain goods not made in America.

Amendment No. 92: Inserts a provision proposed by the Senate transferring certain GSA lands to the 19 Pueblo Tribes of New Mexico.

Amendment No. 93: Inserts a provision proposed by the Senate transferring certain lands located in Holbrook, Arizona from the Department of the Air Force to the National Park Service.

TITLE VI—GOVERNMENTWIDE GENERAL PROVISIONS

Amendment No. 94: Modifies language proposed by the House and deleted by the Senate concerning blue collar wage grade employee pay.

Federal Wage System

The conferees adopted the Senate language in section 615 which will parallel the phasing in of the locality-pay with the pay increases of Federal Wage System (FWS) employees.

Amendment No. 95: Restores language proposed by the House and stricken by the Senate which establishes certain reporting requirements for the detailing of certain Federal employees.

Amendment No. 96: Restores language proposed by the House and stricken by the Senate which provides for mandatory use of FTS2000. The conferees agree that this constitutes legislation on an appropriations bill and that mandatory use language is included because the authorizing committees have requested the conferees to include this provision in this Act. The conferees recognize the government-wide savings achieved as a result of FTS2000 and believe that mandatory use should continue as long as the Administration can demonstrate that it is cost effective.

Amendment No. 97: Inserts a provision proposed by the Senate relating to the funding of transportation audits, by requiring an audit fee to be charged and collected by GSA.

Amendment No. 98: Inserts a provision proposed by the Senate extending by one year the reporting date for the Social Security Notch Commission.

Amendment No. 99: Inserts a provision proposed by the Senate which renames and extends the Washington, DC–MD–VA metropolitan statistical area for purposes of Section 404 of the Federal Employees Pay Comparability Act of 1990.

Amendment No. 100: Deletes language proposed by the Senate which related to toner cartridge recycling. For further discussion, see amendment numbered 43.

Amendment No. 101: Inserts a provision proposed by the Senate requiring agencies to have in place and administer a written policy to insure that all of its work places are free from discrimination and sexual harassment and are not in violation of certain laws.

Amendment No. 102: Modifies language proposed by the Senate regarding revenue forgone reform.

REVENUE FORGONE REFORM

Revenue Forgone Reform represents a compromise worked out by the Committee on Post Office and Civil Service among commercial and nonprofit mailers to eliminate the authorization for revenue forgone appropriations for nonprofit second-class, classroom second-class, in-county second-class, nonprofit third-class and library rate mail. The title creates a mechanism to continue preferred, lower postage rates for nonprofit mailers without the need for taxpayer subsidy. The title also establishes a six year phase-in of postage rate increases for nonprofit mail. During that phase-in period rates for nonletter-shaped nonprofit third-class mail must be at least the rate applicable on September 30, 1993.

Commercial use of nonprofit third-class mail has been prohibited. Advertising for nonprofit second-class mail has been limited as has the use of library rate mail by commercial publishers. Publishers may use library rate mail only for matter which has been ordered by libraries or schools. The managers intend that the Postal Service shall administer these new eligibility reforms in a manner that does not unduly jeopardize continued access to the postal system by reduced rate mailers who are seeking to comply with the new standards. The Postal Service may well establish a phased-in

enforcement policy, including use of its authority to settle any deficiency claim against a reduced rate mailer.

U.S. Postal Service / U.S. Census

The conferees are encouraged by the cooperation between the Postal Service and the Bureau of the Census thus far in preparing for the next census. The conferees expect the Postal Service to continue to cooperate fully with the Bureau of the Census to prepare address lists and geographic capability for the 1995 Census Test. Any delays will jeopardize the Census Bureau's ability to test adequately in 1995 methods needed to take the decennial census in 2000. Therefore, the conferees expect the Postal Service to share its address lists with the Census Bureau, as necessary to carry out a successful test. The conferees also expect that the information will remain confidential, since the Census Bureau is subject to strict standards of confidentiality under Title 13, U.S.C.

Amendment No. 103: Deletes a provision proposed by the Senate which would have provided that certain mailings made pursuant to that Act can be made at half the cost of first class mail.

Voter Registration Mail

The conferees deleted the Senate amendment that would have made a one-half First-Class postage rate available to voting registration officials, in place of the nonprofit third-class rate originally authorized in the National Voter Registration Act of 1993. This change would have increased the initial cost of reduced rates for voter registration mail from about $2.3 million to $9.7 million when the new Act becomes effective in 1995, and would have added a further amount to those costs each time that First-Class rates were increased in a future postal rate proceeding. The conferees were disturbed by the potential cost of this reduced rate provision.

The conferees are aware, however, of the concerns of some election officials who believe that the bulk third-class mail rate will not be sufficient to include all of the mailing requirements of the Act. If this remains a problem, the conferees urge a review of this situation.

National Partnership Council

The amendment also inserts a provision which would establish, subject to authorization, the National Partnership Council. The National Partnership Council will be tasked with establishing a labor-management partnership to create a high-performance, high-quality government. In an effort to reinvent government, a new vision for labor-management relations is necessary in order to handle the obstacles which may be encountered as the government begins to change its way of operating. This National Partnership Council should be authorized by the appropriate legislative committees.

Use of Unobligated Funds

The amendment also inserts a provision which allows 50 percent of the funds remaining unobligated at the end of fiscal year 1994 to be carried over to fiscal year 1995. Of the 50 percent, 2 per-

cent may be used to finance cash awards to employees whose actions contributed to producing the savings and 3 percent may be used for employee training programs.

The salaries and expenses accounts affected by this provision are as follows:

Title I—Departmental Offices, Office of the Inspector General, Federal Law Enforcement Training Center, Financial Management Service, Bureau of Alcohol, Tobacco and Firearms, United States Customs Service, United States Mint, Bureau of the Public Debt, Internal Revenue Service Administration and Management, Internal Revenue Service, Processing Tax Returns and Assistance, Internal Revenue Service, Tax Law Enforcement, and the United States Secret Service.

Title III—All accounts excluding only Compensation of the President, Unanticipated Needs, Federal Drug Control Program, and Special Forfeiture Fund.

Title IV—All accounts excluding Government Payment for Annuitants, Employees Health Benefits, Employee Life Insurance, and Payment to Civil Service Retirement and Disability Fund.

Centers for Disease Control

The amendment also inserts a provision regarding the Centers for Disease Control (CDC). In order to meet the demands of long term growth, funds were authorized in the fiscal year 1993 Treasury, Postal Service, and General Government Appropriations Act to acquire a "new" CDC campus in the Atlanta, Georgia area. The conferees have included language to make clear that a CDC laboratory authorized in an earlier fiscal year may be erected on the new campus.

U.S. Courthouse, Montgomery, Alabama

The amendment also inserts a provision which authorizes the Administrator of General Services to pay for replacing the site and necessary improvements of the facility which is being vacated for the needs of the courthouse.

Amendment No. 104: Deletes a provision proposed by the Senate which would have established a non-smoking policy in Federal buildings.

Nonsmoking Policy for Federal Buildings

The conferees have agreed to eliminate this Senate provision which established a nonsmoking policy for federal buildings. The language proposed by the Senate is legislative in nature and is currently under consideration by the appropriate legislative Committees.

While the conferees have agreed to eliminate the provision, this does not signal a lack of concern for the health and safety of employees. The conferees understand the concerns over the effect of second-hand smoke on those working in poorly ventilated areas. Therefore, the conferees agree that the Administrator shall ensure the establishment of separate smoking areas. Furthermore, the conferees agree that the Administrator should establish a policy to phase out these smoking areas over a period of time.

Amendment No. 105: Deletes language proposed by the Senate which would have prohibited the sale of tobacco products in vending machines located in or around any Federal building except under certain circumstances.

Cigarette Sales to Minors

The conferees have agreed to eliminate this language concerning cigarette sales to minors. The language proposed by the Senate is legislative in nature and is currently under consideration by the appropriate legislative Committees.

While the conferees have agreed to eliminate the provision, this does not signal a lack of concern for the health and safety of minors. The conferees agree that locating cigarette sales vending machines in areas accessible to minors poses a serious problem as their presence increases the availability of products which otherwise may be prohibited from sale to minors. Therefore, the conferees direct the Administrator to eliminate vending machines in areas which are accessible to minors.

Compensating Non-U.S. Citizens

The amendment also inserts a provision which amends Section 606 of this Act to allow certain citizens of the former Soviet Union to be employed by the United States Government.

The amendment also inserts a provision which amends Section 606 of this Act to allow certain citizens of the People's Republic of China to be employed by the United States Government.

The purpose of this language is to ensure that compensation of any officer or employee of the Government of the United States whose post of duty is in the United States shall be available and provided to nationals of the People's Republic of China formerly protected by the Executive Order No. 12711 of April 11, 1990. Chinese aliens covered under this section include those nationals that meet the eligibility requirements of the Chinese Student Protection Act (P.L. 102–404), whether or not they took advantage of said benefits.

Conference Total—With Comparisons

The total new budget (obligational) authority for the fiscal year 1994 recommended by the Committee of Conference, with comparisons to the fiscal year 1993 amount, the 1994 budget estimates, and the House and Senate bills for 1994 follow:

New budget (obligational) authority, fiscal year 1993	$22,527,131,538
Budget estimates of new (obligational) authority, fiscal year 1994	22,006,136,000
House bill, fiscal year 1994	22,708,780,000
Senate bill, fiscal year 1994	22,157,687,000
Conference agreement, fiscal year 1994	22,538,822.000
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1993	+11,690,462
Budget estimates of new (obligational) authority, fiscal year 1994	+532,686,000
House bill, fiscal year 1994	−169,958,000
Senate bill, fiscal year 1994	+381,135,000

Steny H. Hoyer,
Peter J. Visclosky,
George (Buddy) Darden,
John W. Olver,
Tom Bevill,
Martin O. Sabo,
William H. Natcher,
Jim Lightfoot
(except amendment 36),
Frank R. Wolf
(except amendment 36),
Joseph M. McDade
(except amendment 36),
Managers on the Part of the House.

Dennis DeConcini,
Barbara A. Mikulski,
J. Robert Kerrey,
Robert C. Byrd,
Christopher S. Bond,
Al D'Amato,
Mark O. Hatfield,
Managers on the Part of the Senate.

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103D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 103–257
Part 1

CATAWBA INDIAN TRIBE OF SOUTH CAROLINA LAND CLAIMS SETTLEMENT ACT OF 1993

SEPTEMBER 27, 1993.—Ordered to be printed

Mr. MILLER of California, from the Committee on Natural Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2399 which on June 10, 1993 was referred jointly to the Committee on Natural Resources and the Committee Ways and Means]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2399) to provide for the settlement of land claims of the Catawba Tribe of Indians in the State of South Carolina and the restoration of the Federal trust relationship with the Tribe, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993".

SEC. 2. DECLARATION OF POLICY, CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress declares and finds that:

(1) It is the policy of the United States to promote tribal self-determination and economic self-sufficiency and to support the resolution of disputes over historical claims through settlements mutually agreed to by Indian and non-Indian parties.

69–006

(2) There is pending before the United States District Court for the District of South Carolina a lawsuit disputing ownership of approximately 140,000 acres of land in the State of South Carolina and other rights of the Catawba Indian Tribe under Federal law.

(3) The Catawba Indian Tribe initiated a related lawsuit against the United States in the United States Court of Federal Claims seeking monetary damages.

(4) Some of the significant historical events which have led to the present situation include:

(A) In treaties with the Crown in 1760 and 1763, the Tribe ceded vast portions of its aboriginal territory in the present States of North and South Carolina in return for guarantees of being quietly settled on a 144,000-acre reservation.

(B) The Tribe's district court suit contended that in 1840 the Tribe and the State entered into an agreement without Federal approval or participation whereby the Tribe ceded its treaty reservation to the State, thereby giving rise to the Tribe's claim that it was dispossessed of its lands in violation of Federal law.

(C) In 1943, the United States entered into an agreement with the Tribe and the State to provide services to the Tribe and its members. The State purchased 3,434 acres of land and conveyed it to the Secretary in trust for the Tribe and the Tribe organized under the Indian Reorganization Act.

(D) In 1959, when Congress enacted the Catawba Tribe of South Carolina Division of Assets Act (25 U.S.C. 931–938), Federal agents assured the Tribe that if the Tribe would release the Government from its obligation under the 1943 agreement and agree to Federal legislation terminating the Federal trust relationship and liquidating the 1943 reservation, the status of the Tribe's land claim would not be jeopardized by termination.

(E) In 1980, the Tribe initiated Federal court litigation to regain possession of its treaty lands and in 1986, the United States Supreme Court ruled in South Carolina against Catawba Indian Tribe that the 1959 Act resulted in the application of State statutes of limitations to the Tribe's land claim. Two subsequent decisions of the United States Court of Appeals for the Fourth Circuit have held that some portion of the Tribe's claim is barred by State statutes of limitations and that some portion is not barred.

(5) The pendency of these lawsuits has led to substantial economic and social hardship for a large number of landowners, citizens and communities in the State of South Carolina, including the Catawba Indian Tribe. Congress recognizes that if these claims are not resolved, further litigation against tens of thousands of landowners would be likely; that any final resolution of pending disputes through a process of litigation would take many years and entail great expenses to all parties; continue economically and socially damaging controversies; prolong uncertainty as to the ownership of property; and seriously impair long-term economic planning and development for all parties.

(6) The 102d Congress has enacted legislation suspending until October 1, 1993, the running of any unexpired statute of limitation applicable to the Tribe's land claim in order to provide additional time to negotiate settlement of these claims.

(7) It is recognized that both Indian and non-Indian parties enter into this settlement to resolve the disputes raised in these lawsuits and to derive certain benefits. The parties' Settlement Agreement constitutes a good faith effort to resolve these lawsuits and other claims and requires implementing legislation by the Congress of the United States, the General Assembly of the State of South Carolina, and the governing bodies of tho South Carolina counties of York and Lancaster.

(8) To advance the goals of the Federal policy of Indian self-determination and restoration of terminated Indian Tribes, and in recognition of the United States obligation to the Tribe and the Federal policy of settling historical Indian claims through comprehensive settlement agreements, it is appropriate that the United States participate in the funding and implementation of the Settlement Agreement.

(b) PURPOSE.—It is the purpose of this Act—

(1) to approve, ratify, and confirm the Settlement Agreement entered into by the non-Indian settlement parties and the Tribe, except as otherwise provided by this Act;

(2) to authorize and direct the Secretary to implement the terms of such Settlement Agreement;

(3) to authorize the actions and appropriations necessary to implement the provisions of tho Settlement Agreement and this Act;

(4) to remove the cloud on titles in the State of South Carolina resulting from the Tribe's land claim; and

(5) to restore the trust relationship between the Tribe and the United States.

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) The term "Tribe" means the Catawba Indian Tribe of South Carolina as constituted in aboriginal times, which was party to the Treaty of Pine Tree Hill in 1760 as confirmed by the Treaty of Augusta in 1763, which was party also to the Treaty of Nation Ford in 1840, and which was the subject of the Termination Act, and all predecessors and successors in interest, including the Catawba Indian Tribe of South Carolina, Inc.

(2) The term "claim" or "claims" means any claim which was asserted by the Tribe in either Suit, and any other claim which could have been asserted by the Tribe or any Catawba Indian of a right, title or interest in property, to trespass or property damages, or of hunting, fishing or other rights to natural resources, if such claim is based upon aboriginal title, recognized title, or title by grant, patent, or treaty including the Treaty of Pine Tree Hill of 1760, the Treaty of Augusta of 1763, or the Treaty of Nation Ford of 1840.

(3) The term "Executive Committee" means the body of the Tribe composed of the Tribe's executive officers as selected by the Tribe in accordance with its constitution.

(4) The term "Existing Reservation" means that tract of approximately 630 acres conveyed to the State in trust for the Tribe by J.M. Doby on December 24, 1842, by deed recorded in York County Deed Book N, pp. 340–341.

(5) The term "General Council" means the membership of the Tribe convened as the Tribe's governing body for the purpose of conducting tribal business pursuant to the Tribe's constitution.

(6) The term "Member" means individuals who are currently members of the Tribe or who are enrolled in accordance with this Act.

(7) The term "Reservation" or "Expanded Reservation" means the Existing Reservation and the lands added to the Existing Reservation in accordance with section 12 of this Act, which are to be held in trust by the Secretary in accordance with this Act.

(8) The term "Secretary" means the Secretary of the Interior.

(9) The term "service area" means the area composed of the State of South Carolina and Cabarrus, Cleveland, Gaston, Mecklenburg, Rutherford, and Union counties in the State of North Carolina.

(10) The term "Settlement Agreement" means the document entitled "Agreement in Principle " between the Tribe and the State of South Carolina and attached to the copy of the State Act and filed with the Secretary of State of the State of South Carolina, as amended to conform to this Act and printed in the Congressional Record.

(11) The term "State" means, except for section 6 (a) through (f), the State of South Carolina.

(12) The term "State Act" means the Act enacted into law by the State of South Carelina on June 14, 1993, and codified as S.C. Code Ann., sections 27–16–10 through 27–16–140, to implement the Settlement Agreement.

(13) The term "Suit" or "Suits" means Catawba Indian Tribe of South Carolina v. State of South Carolina, et al., docketed as Civil Action No. 80–2050 and filed in the United States District Court for the District of South Carolina; and Catawba Indian Tribe of South Carolina v. The United States of America, docketed as Civil Action No. 90–553L and filed in the United States Court of Federal Claims.

(14) The term "Termination Act" means the Act entitled "An Act to provide for the division of the tribal assets of the Catawba Indian Tribe of South Carolina among the members of the Tribe and for other purposes", approved September 21, 1959 (73 Stat. 592; 25 U.S.C. 931–938).

(15) The term "transfer" includes (but is not limited to) any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event or circumstance that resulted in a change in title to, possession of, dominion over, or control of land, water, minerals, timber, or other natural resources.

(16) The term "Trust Funds" means the trust funds established by section 11 of this Act.

SEC. 4. RESTORATION OF FEDERAL TRUST RELATIONSHIP.

(a) RESTORATION OF THE FEDERAL TRUST RELATIONSHIP AND APPROVAL, RATIFICATION, AND CONFIRMATION OF THE SETTLEMENT AGREEMENT.—On the effective date of this Act—

(1) the trust relationship between the Tribe and the United States is restored; and

(2) the Settlement Agreement and the State Act are approved, ratified, and confirmed by the United States to effectuate the purposes of this Act, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.

(b) ELIGIBILITY FOR FEDERAL BENEFITS AND SERVICES.—Notwithstanding any other provision of law, on the effective date of this Act, the Tribe and the Members shall be eligible for all benefits and services furnished to federally recognized Indian tribes and their members because of their status as Indians. On the effective date of this Act, the Secretary shall enter the Tribe on the list of federally recognized bands and tribes maintained by the Department of the Interior; and its members shall be entitled to special services, educational benefits, medical care, and welfare assistance provided by the United States to Indians because of their status as Indians, and the Tribe shall be entitled to the special services performed by the United States for tribes because of their status as Indian tribes. For the purpose of eligibility for Federal services made available to members of federally recognized Indian tribes because of their status as Indian tribal members, Members of the Tribe in the Tribe's service area shall be deemed to be residing on or near a reservation.

(c) REPEAL OF TERMINATION ACT.—The Termination Act is repealed.

(d) EFFECT ON PROPERTY RIGHTS AND OTHER OBLIGATIONS.—Except as otherwise specifically provided in this Act, this Act shall not affect any property right or obligation or any contractual right or obligation in existence before the effective date of this Act, or any obligation for taxes levied before that date.

(e) EXTENT OF JURISDICTION.—This Act shall not be construed to empower the Tribe with special jurisdiction or to deprive the State of jurisdiction other than as expressly provided by this Act or by the State Act. The jurisdiction and governmental powers of the Tribe shall be solely those set forth in this Act and the State Act.

SEC. 5. SETTLEMENT FUNDS.

(a) AUTHORIZATION FOR APPROPRIATION.—There is hereby authorized to be appropriated $32,000,000 for the Federal share which shall be deposited in the trust funds established pursuant to section 11 of this Act or paid pursuant to section 6(g).

(b) DISBURSEMENT IN ACCORDANCE WITH SETTLEMENT AGREEMENT.—The Federal funds appropriated pursuant to this Act shall be disbursed in four equal annual installments of $8,000,000 beginning in the fiscal year following enactment of this Act. Funds transferred to the Secretary from other sources shall be deposited in the trust funds established pursuant to section 11 of this Act or paid pursuant to section 6(g) within 30 days of receipt by the Secretary.

(c) FEDERAL, STATE, LOCAL AND PRIVATE CONTRIBUTIONS HELD IN TRUST BY SECRETARY.—The Secretary shall, on behalf of the Tribe, collect those contributions toward settlement appropriated or received by the State pursuant to section 5.2 of the Settlement Agreement and shall either hold such funds totalling $18,000,000, together with the Federal funds appropriated pursuant to this Act, in trust for the Tribe pursuant to the provisions of section 11 of this Act or pay such funds pursuant to section 6(g) of this Act.

(d) NONPAYMENT OF STATE, LOCAL, OR PRIVATE CONTRIBUTIONS.—The Secretary shall not be accountable or incur any liability for the collection, deposit, or management of the non-Federal contributions made pursuant to section 5.2 of the Settlement Agreement, or payment of such funds pursuant to section 6(g) of this Act, until such time as such funds are received by the Secretary.

SEC. 6. RATIFICATION OF PRIOR TRANSFERS; EXTINGUISHMENT OF ABORIGINAL TITLE, RIGHTS AND CLAIMS.

(a) RATIFICATION OF TRANSFERS.—Any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Tribe, any one or more of its Members, or anyone purporting to be a Member, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, and Congress hereby approves and ratifies any such transfer effective as of the date of such transfer. Nothing in this section shall be construed to affect, eliminate, or revive the personal claim of any individual Member (except for any Federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(b) ABORIGINAL TITLE.—To the extent that any transfer of land or natural resources described in subsection (a) of this section may involve land or natural resources to which the Tribe, any of its Members, or anyone purporting to be a Member, or any other Indian, Indian nation, or Tribe or band of Indians had aboriginal title, subsection (a) of this section shall be regarded as an extinguishment of aboriginal title as of the date of such transfer.

(c) EXTINGUISHMENT OF CLAIMS.—By virtue of the approval and ratification of any transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Tribe, any of its Members, or anyone purporting to be a Member, or any predecessors or successors in interest thereof or any other Indian, Indian Nation, or tribe or band of Indians, arising at the time of or subsequent to the transfer and based on any interest in or right involving such land or natural resources, including without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of the transfer.

(d) EXTINGUISHMENT OF TITLE.—(1) All claims and all right, title, and interest that the Tribe, its Members, or any person or group of persons purporting to be Catawba Indians may have to aboriginal title, recognized title, or title by grant, patent, or treaty to the lands located anywhere in the United States are hereby extinguished.

(2) This extinguishment of claims shall also extinguish title to any hunting, fishing, or water rights or rights to any other natural resource claimed by the Tribe or a Member based on aboriginal or treaty recognized title, and all trespass damages and other damages associated with use, occupancy or possession, or entry upon such lands.

(e) BAR TO FUTURE CLAIMS.—The United States is hereby barred from asserting by or on behalf of the Tribe or any of its Members, or anyone purporting to be a Member, any claim arising before the effective date of this Act from the transfer of any land or natural resources by deed or other grant, or by treaty, compact, or act of law, on the grounds that such transfer was not made in accordance with the laws of South Carolina or the Constitution or laws of the United States.

(f) NO DEROGATION OF FEE SIMPLE IN EXISTING RESERVATION, OR EFFECT ON MEMBERS' FEE INTERESTS.—Nothing in this Act shall be construed to diminish or derogate from the Tribe's estate in the Existing Reservation; or to divest or disturb title in any land conveyed to any person or entity as a result of the Termination Act and the liquidation and partition of tribal lands; or to divest or disturb the right, title and interest of any Member in any fee simple, leasehold or remainder estate or any equitable or beneficial right or interest any such Member may own individually and not as a Member of the Tribe.

(g) COSTS AND ATTORNEYS' FEES.—The parties to the Suits shall bear their own costs and attorneys' fees. As provided by section 6.4 of the Settlement Agreement, the Secretary shall pay to the Tribe's attorney in the Suits attorneys' fees, and expenses from, and not to exceed 10 percent of, the $50,000,000 obligated for payment to the Tribe by Federal, State, local, and private parties pursuant to section 5 of the Settlement Agreement.

(h) PERSONAL CLAIMS NOT AFFECTED.—Nothing in this section shall be deemed to affect, diminish, or eliminate the personal claim of any individual Indian which is pursued under any law of general applicability (other than Federal common law fraud) that protects non-Indians as well as Indians.

(i) FEDERAL PAYMENT.—In the event any of the Federal payments are not paid as set forth in section 5, such failure to pay shall give rise to a cause of action by the Tribe against the United States for money damages for the amount authorized to be paid to the Tribe in section 5(a) in settlement of the Tribe's claim, and the Tribe is authorized to bring an action in the United States Court of Claims for such funds plus applicable interest. The United States hereby waives any affirmative defense to such action.

(j) STATE PAYMENT.—In the event any of the State payments are not paid as set forth in section 5 of this Act, such failure to pay shall give rise to a cause of action in the United States District Court for the District of South Carolina by the Tribe against the State of South Carolina for money damages for the amount authorized to be paid to the Tribe by the State in § 27–16–50 (A) of the State Act in settlement of the Tribe's claim. Pursuant to § 27–16–50 (E) of the State Act, the State of South Carolina waives any Eleventh Amendment immunity to such action.

SEC. 7. BASE MEMBERSHIP ROLL.

(a) BASE MEMBERSHIP ROLL CRITERIA.—Within one year after enactment of this section, the Tribe shall submit to the Secretary, for approval, its base membership

roll. An individual is eligible for inclusion on the base membership roll if that individual is living on the date of enactment of this Act and—

(1) is listed on the membership roll published by the Secretary in the Federal Register on February 25, 1961 (26 FR 1680–1688, "Notice of Final Membership Roll"), and is not excluded under the provisions of subsection (c);

(2) the Executive Committee determines, based on the criteria used to compile the roll referred to in paragraph (1), that the individual should have been included on the membership roll at that time, but was not; or

(3) is a lineal descendant of a Member whose name appeared or should have appeared on the membership roll referred to in paragraph (1).

(b) BASE MEMBERSHIP ROLL NOTICE.—Within 90 days after the enactment of this Act, the Secretary shall publish in the Federal Register, and in three newspapers of general circulation in the Tribe's service area, a notice stating—

(1) that a base membership roll is being prepared by the Tribe and that the current membership roll is open and will remain open for a period of 90 days;

(2) the requirements for inclusion on the base membership roll;

(3) the final membership roll published by the Secretary in the Federal Register on February 25, 1961;

(4) the current membership roll as prepared by the Executive Committee and approved by the General Council; and

(5) the name and address of the tribal or Federal official to whom inquiries should be made.

(c) COMPLETION OF BASE MEMBERSHIP ROLL.—Within 120 days after publication of notice under subsection (b), the Secretary, after consultation with the Tribe, shall prepare and publish in the Federal Register, and in three newspapers of general circulation in the Tribe's service area, a proposed final base membership roll of the Tribe. Within 60 days from the date of publication of the proposed final base membership roll, an appeal may be filed with the Executive Committee under rules made by the Executive Committee in consultation with the Secretary. Such an appeal may be filed by a Member with respect to the inclusion of any name on the proposed final base membership roll and by any person with respect to the exclusion of his or her name from the final base membership roll. The Executive Committee shall review such appeals and render a decision, subject to the Secretary's approval. If the Executive Committee and the Secretary disagree, the Secretary's decision will be final. All such appeals shall be resolved within 90 days following publication of the proposed roll. The final base membership roll of the Tribe shall then be published in the Federal Register, and in three newspapers of general circulation in the Tribe's service area, and shall be final for purposes of the distribution of funds from the Per Capita Trust Fund established under section 11(h).

(d) FUTURE MEMBERSHIP IN THE TRIBE.—The Tribe shall have the right to determine future membership in the Tribe; however, in no event may an individual be enrolled as a tribal member unless the individual is a lineal descendant of a person on the final base membership roll and has continued to maintain political relations with the Tribe.

SEC. 8. TRANSITIONAL AND PROVISIONAL GOVERNMENT.

(a) FUTURE TRIBAL GOVERNMENT.—The Tribe shall adopt a new constitution within 24 months after the effective date of this Act.

(b) EXECUTIVE COMMITTEE AS TRANSITIONAL BODY.—(1) Until the Tribe has adopted a constitution, the existing tribal constitution shall remain in effect and the Executive Committee is recognized as the provisional and transitional governing body of the Tribe. Until an election of tribal officers under the new constitution, the Executive Committee shall—

(A) represent the Tribe and its Members in the implementation of this Act; and

(B) during such period—

(i) have full authority to enter into contracts, grant agreements and other arrangements with any Federal department or agency; and

(ii) have full authority to administer or operate any program under such contracts or agreements.

(2) Until the initial election of tribal officers under a new constitution and bylaws, the Executive Committee shall—

(A) determine tribal membership in accordance with the provisions of section 7; and

(B) oversee and implement the revision and proposal to the Tribe of a new constitution and conduct such tribal meetings and elections as are required by this Act.

SEC. 9. TRIBAL CONSTITUTION AND GOVERNANCE.

(a) INDIAN REORGANIZATION ACT.—If the Tribe so elects, it may organize under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act"). The Tribe shall be subject to such Act except to the extent such sections are inconsistent with this Act.

(b) ADOPTION OF NEW TRIBAL CONSTITUTION.—Within 180 days after the effective date of this Act, the Executive Committee shall draft and distribute to each Member eligible to vote under the tribal constitution in effect on the effective date of this Act, a proposed constitution and bylaws for the Tribe together with a brief, impartial description of the proposed constitution and bylaws and a notice of the date, time and location of the election under this subsection. Not sooner than 30 days or later than 90 days after the distribution of the proposed constitution, the Executive Committee shall conduct a secret-ballot election to adopt a new constitution and bylaws.

(c) MAJORITY VOTE FOR ADOPTION; PROCEDURE IN EVENT OF FAILURE TO ADOPT PROPOSED CONSTITUTION.—(1) The tribal constitution and bylaws shall be ratified and adopted if—

(A) not less than 30 percent of those entitled to vote do vote; and

(B) approved by a majority of those actually voting.

(2) If in any such election such majority does not approve the adoption of the proposed constitution and bylaws, the Executive Committee shall prepare another proposed constitution and bylaws and present it to the Tribe in the same manner provided in this section for the first constitution and bylaws. Such new proposed constitution and bylaws shall be distributed to the eligible voters of the Tribe no later than 180 days after the date of the election in which the first proposed constitution and bylaws failed of adoption. An election on the question of the adoption of the new proposal of the Executive Committee shall be conducted in the same manner provided in subsection (b) for the election on the first proposed constitution and bylaws.

(d) ELECTION OF TRIBAL OFFICERS.—Within 120 days after the Tribe ratifies and adopts a constitution and bylaws, the Executive Committee shall conduct an election by secret ballot for the purpose of electing tribal officials as provided in the constitution and bylaws. Subsequent elections shall be held in accordance with the Tribe's constitution and bylaws.

(e) EXTENSION OF TIME.—Any time periods prescribed in subsections (b) and (c) may be altered by written agreement between the Executive Committee and the Secretary.

SEC. 10. ADMINISTRATIVE PROVISIONS RELATING TO JURISDICTION, TAXATION, AND OTHER MATTERS.

In the administration of this Act:

(1) All matters involving tribal powers, immunities, and jurisdiction, whether criminal, civil, or regulatory, shall be governed by the terms and provisions of the Settlement Agreement and the State Act, unless otherwise provided in this Act.

(2) All matters pertaining to governance and regulation of the reservation (including environmental regulation and riparian rights) shall be governed by the terms and provisions of the Settlement Agreement and the State Act, including, but not limited to, section 17 of the Settlement Agreement and section 27–16–120 of the State Act, unless otherwise provided in this Act.

(3) The Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.) shall apply to Catawba Indian children except as provided in the Settlement Agreement.

(4) Whether or not the Tribe, under section 9(a), elects to organize under the Act of June 18, 1934, the Tribe, in any constitution adopted by the Tribe, may be authorized to exercise such authority as is consistent with the Settlement Agreement and the State Act.

(5) In no event may the Tribe pledge or hypothecate the income or principal of the Catawba Education or Social Services and Elderly Trust Funds or otherwise use them as security or a source of payment for bonds the Tribe may issue.

(6) The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall apply to the Tribe except to the extent that such application may be inconsistent with this Act or the Settlement Agreement.

SEC. 11. TRIBAL TRUST FUNDS.

(a) PURPOSES OF TRUST FUNDS.—All funds paid pursuant to section 5 of this Act, except for payments made pursuant to section 6(g), shall be deposited with the Secretary in trust for the benefit of the Tribe. Separate trust funds shall be established for the following purposes: economic development, land acquisition, education, social services and elderly assistance, and per capita payments. Except as provided in this section, the Tribe, in consultation with the Secretary, shall determine the share of

settlement payments to be deposited in each Trust Fund, and define, consistently with the provisions of this section, the purposes of each Trust Fund and provisions for administering each, specifically including provisions for periodic distribution of current and accumulated income, and for invasion and restoration of principal.

(b) OUTSIDE MANAGEMENT OPTION.—(1) The Tribe, in consultation with and subject to the approval of the Secretary, as set forth in this section, is authorized to place any of the Trust Funds under professional management, outside the Department of the Interior.

(2) If the Tribe elects to place any of the Trust Funds under professional management outside the Department of the Interior, it may engage a consulting or advisory firm to assist in the selection of an independent professional investment management firm, and it shall engage, with the approval of the Secretary, an independent investment management firm of proven competence and experience established in the business of counseling large endowments, trusts, or pension funds.

(3) The Secretary shall have 45 days to approve or reject any independent investment management firm selected by the Tribe. If the Secretary fails to approve or reject the firm selected by the Tribe within 45 days, the investment management firm selected by the Tribe shall be deemed to have been approved by the Secretary.

(4) Secretarial approval of an investment management firm shall not be unreasonably withheld, and any Secretarial disapproval of an investment management firm shall be accompanied by a detailed explanation setting forth the Secretary's reasons for such disapproval.

(5)(A) For funds placed under professional management, the Tribe, in consultation with the Secretary and its investment manager, shall develop—

(i) current operating and long-term capital budgets; and

(ii) a plan for managing, investing, and distributing income and principal from the Trust Funds to match the requirements of the Tribe's operating and capital budgets.

(B) For each Trust Fund which the Tribe elects to place under outside professional management, the investment plan shall provide for investment of Trust Fund assets so as to serve the purposes described in this section and in the Trust Fund provisions which the Tribe shall establish in consultation with the Secretary and the independent investment management firm.

(C) Distributions from each Trust Fund shall not exceed the limits on the use of principal and income imposed by the applicable provisions of this Act for that particular Trust Fund.

(D)(i) The Tribe's investment management plan shall not become effective until approved by the Secretary.

(ii) Upon submission of the plan by the Tribe to the Secretary for approval, the Secretary shall have 45 days to approve or reject the plan. If the Secretary fails to approve or disapprove the plan within 45 days, the plan shall be deemed to have been approved by the Secretary and shall become effective immediately.

(iii) Secretarial approval of the plan shall not be unreasonably withheld and any secretarial rejection of the plan shall be accompanied by a detailed explanation setting forth the Secretary's reasons for rejecting the plan.

(E) Until the selection of an established investment management firm of proven competence and experience, the Tribe shall rely on the management, investment, and administration of the Trust Funds by the Secretary pursuant to the provisions of this section.

(c) TRANSFER OF TRUST FUNDS; EXCULPATION OF SECRETARY.—Upon the Secretary's approval of the Tribe's investment management firm and an investment management plan, all funds previously deposited in trust funds held by the Secretary and all funds subsequently paid into the trust funds, which are chosen for outside management, shall be transferred to the accounts established by an investment management firm in accordance with the approved investment management plan. The Secretary shall be exculpated by the Tribe from liability for any loss of principal or interest resulting from investment decisions made by the investment management firm. Any Trust Fund transferred to an investment management firm shall be returned to the Secretary upon written request of the Tribe, and the Secretary shall manage such funds for the benefit of the Tribe.

(d) LAND ACQUISITION TRUST.—(1) The Secretary shall establish and maintain a Catawba Land Acquisition Trust Fund, and until the Tribe engages an outside firm for investment management of this trust fund, the Secretary shall manage, invest, and administer this trust fund. The original principal amount of the Land Acquisition Trust Fund shall be determined by the Tribe in consultation with the Secretary.

(2) The principal and income of the Land Acquisition Trust Fund may be used for the purchase and development of Reservation and non-Reservation land pursu-

ant to the Settlement Agreement, costs related to land acquisition, and costs of construction of infrastructure and development of the Reservation and non-Reservation land.

(3)(A) Upon acquisition of the maximum amount of land allowed for expansion of the Reservation, or upon request of the Tribe and approval of the Secretary pursuant to the Secretarial approval provisions set forth in subsection (b)(5)(D) of this section, all or part of the balance of this trust fund may be merged into one or more of the Economic Development Trust Fund, the Education Trust Fund, or the Social Services and Elderly Assistance Trust Fund.

(B) Alternatively, at the Tribe's election, the Land Acquisition Trust Fund may remain in existence after all the Reservation land is purchased in order to pay for the purchase of non-Reservation land.

(4)(A) The Tribe may pledge or hypothecate the income and principal of the Land Acquisition Trust Fund to secure loans for the purchase of Reservation and non-Reservation lands.

(B) Following the effective date of this Act and before the final annual disbursement is made as provided in section 5 of this Act, the Tribe may pledge or hypothecate up to 50 percent of the unpaid annual installments required to be paid to this Trust Fund, the Economic Development Trust Fund and the Social Services and Elderly Assistance Trust Fund by section 5 of this Act and by section 5 of the Settlement Agreement, to secure loans to finance the acquisition of Reservation or non-Reservation land or infrastructure improvements on such lands.

(e) ECONOMIC DEVELOPMENT TRUST.—(1) The Secretary shall establish and maintain a Catawba Economic Development Trust Fund, and until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer this Trust Fund. The original principal amount of the Economic Development Trust Fund shall be determined by the Tribe in consultation with the Secretary. The principal and income of this Trust Fund may be used to support tribal economic development activities, including but not limited to infrastructure improvements and tribal business ventures and commercial investments benefiting the Tribe.

(2) The Tribe, in consultation with the Secretary, may pledge or hypothecate future income and up to 50 percent of the principal of this Trust Fund to secure loans for economic development. In defining the provisions for administration of this Trust Fund, and before pledging or hypothecating future income or principal, the Tribe and the Secretary shall agree on rules and standards for the invasion of principal and for repayment or restoration of principal, which shall encourage preservation of principal, and provide that, if feasible, a portion of all profits derived from activities funded by principal be applied to repayment of the Trust Fund.

(3) Following the effective date of this Act and before the final annual disbursement is made as provided in section 5 of this Act, the Tribe may pledge or hypothecate up to 50 percent of the unpaid annual installments required to be paid by section 5 of this Act and by section 5 of the Settlement Agreement to secure loans to finance economic development activities of the Tribe, including (but not limited to) infrastructure improvements on Reservation and non-Reservation lands.

(4) If the Tribe develops sound lending guidelines approved by the Secretary, a portion of the income from this Trust Fund may also be used to fund a revolving credit account for loans to support tribal businesses or business enterprises of tribal members.

(f) EDUCATION TRUST.—The Secretary shall establish and maintain a Catawba Education Trust Fund, and until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer this Trust Fund. The original principal amount of this Trust Fund shall be determined by the Tribe in consultation with the Secretary; subject to the requirement that upon completion of all payments into the Trust Funds, an amount equal to at least ⅓ of all State, local, and private contributions made pursuant to the Settlement Agreement shall have been paid into the Education Trust Fund. Income from this Trust Fund shall be distributed in a manner consistent with the terms of the Settlement Agreement. The principal of this Trust Fund shall not be invaded or transferred to any other Trust Fund, nor shall it be pledged or encumbered as security.

(g) SOCIAL SERVICES AND ELDERLY ASSISTANCE TRUST.—(1) The Secretary shall establish and maintain a Catawba Social Services and Elderly Assistance Trust Fund and, until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer the Social Services and Elderly Assistance Trust Fund. The original principal amount of this Trust Fund shall be determined by the Tribe in consultation with the Secretary.

(2) The income of this Trust Fund shall be periodically distributed to the Tribe to support social services programs, including (but not limited to) housing, care of elderly, or physically or mentally disabled Members, child care, supplemental health care, education, cultural preservation, burial and cemetery maintenance, and operation of tribal government.

(3) The Tribe, in consultation with the Secretary, shall establish eligibility criteria and procedures to carry out this subsection.

(h) PER CAPITA PAYMENT TRUST FUND.—(1) The Secretary shall establish and maintain a Catawba Per Capita Payment Trust Fund in an amount equal to 15 percent of the settlement funds paid pursuant to section 5 of the Settlement Agreement. Until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer the Catawba Per Capita Payment Trust Fund.

(2) Each person (or their estate) whose name appears on the final base membership roll of the Tribe published by the Secretary pursuant to section 7(c) of this Act will receive a one-time, non-recurring payment from this Trust Fund.

(3) The amount payable to each member shall be determined by dividing the trust principal and any accrued interest thereon by the number of Members on the final base membership roll.

(4)(A) Subject to the provisions of this paragraph, each enrolled member who has reached the age of 21 years on the date the final roll is published shall receive the payment on the date of distribution, which shall be as soon as practicable after date of publication of the final base membership roll. Adult Members shall be paid their pro rata share of this Trust Fund on the date of distribution unless they elect in writing to leave their pro rata share in the Trust Fund, in which case such share shall not be distributed.

(B) The pro rata share of adult Members who elect not to withdraw their payment from this Trust Fund shall be managed, invested and administered, together with the funds of Members who have not attained the age of 21 years on the date the final base membership roll is published, until such Member requests in writing that their pro rata share be distributed, at which time such Member's pro rata share shall be paid, together with the net income of the Trust Fund allocable to such Member's share as of the date of distribution.

(C) No member may elect to have their pro rata share managed by this Trust Fund for a period of more than 21 years after the date of publication of the final base membership roll.

(5)(A) Subject to the provisions of this paragraph, the pro rata share of any Member who has not attained the age of 21 years on the date the final base membership roll is published shall be managed, invested and administered pursuant to the provisions of this section until such Member has attained the age of 21 years, at which time such Member's pro rata share shall be paid, together with the net income of the Trust Fund allocable to such Member's share as of the date of payment. Such Members shall be paid their pro rata share of this Trust Fund on the date they attain 21 years of age unless they elect in writing to leave their pro rata share in the Trust Fund, in which case such share shall not be distributed.

(B) The pro rata share of such Members who elect not to withdraw their payment from this trust fund shall be managed, invested and administered, together with the funds of members who have not attained the age of 21 years on the date the final base membership roll is published, until such Member requests in writing that their pro rata share be distributed, at which time such Member's pro rata share shall be paid, together with the net income of the Trust Fund allocable to such Member's share as of the date of distribution.

(C) No Member may elect to have their pro rata share retained and managed by this Trust Fund beyond the expiration of the period of 21 years after the date of publication of the final base membership roll.

(6) After payments have been made to all Members entitled to receive payments, this Trust Fund shall terminate, and any balance remaining in this Trust Fund shall be merged into the Economic Development Trust Fund, the Education Trust Fund, or the Social Services and Elderly Assistance Trust Fund, as the Tribe may determine.

(i) DURATION OF TRUST FUNDS.—Subject to the provisions of this section and with the exception of the Catawba Per Capita Payment Trust Fund, the Trust Funds established in accordance with this section shall continue in existence so long as the Tribe exists and is recognized by the United States. The principal of these Trust Funds shall not be invaded or distributed except as expressly authorized in this Act or in the Settlement Agreement.

(j) TRANSFER OF MONEY AMONG TRUST FUNDS.—The Tribe, in consultation with the Secretary, shall have the authority to transfer principal and accumulated income between Trust Funds only as follows:

(1) Funds may be transferred among the Catawba Economic Development Trust Fund, the Catawba Land Acquisition Trust Fund and the Catawba Social Services and Elderly Assistance Trust Fund, and from any of those three Trust Funds into the Catawba Education Trust Fund; except, that the mandatory share of State, local, and private sector funds invested in the original corpus of the Catawba Education Trust Fund shall not be transferred to any other Trust Fund.

(2) Any Trust Fund, except for the Catawba Education Trust Fund, may be dissolved by a vote of two-thirds of those Members eligible to vote, and the assets in such Trust Fund shall be transferred to the remaining Trust Funds; except, that (A) no assets shall be transferred from any of the Trust Funds into the Catawba Per Capita Payment Trust Fund, and (B) the mandatory share of State, local and private funds invested in the original corpus of the Catawba Education Trust Fund may not be transferred or used for any non-educational purposes.

(3) The dissolution of any Trust Fund shall require the approval of the Secretary pursuant to the Secretarial approval provisions set forth in subsection (b)(5)(D) of this section.

(k) TRUST FUND ACCOUNTING.—(1) The Secretary shall account to the Tribe periodically, and at least annually, for all Catawba Trust Funds being managed and administered by the Secretary. The accounting shall—

(A) identify the assets in which the Trust Funds have been invested during the relevant period;

(B) report income earned during the period, distinguishing current income and capital gains;

(C) indicate dates and amounts of distributions to the Tribe, separately distinguishing current income, accumulated income, and distributions of principal; and

(D) identify any invasions or repayments of principal during the relevant period and record provisions the Tribe has made for repayment or restoration of principal.

(2)(A) Any outside investment management firm engaged by the Tribe shall account to the Tribe and separately to the Secretary at periodic intervals, at least quarterly. Its accounting shall—

(i) identify the assets in which the Trust Funds have been invested during the relevant period;

(ii) report income earned during the period, separating current income and capital gains;

(iii) indicate dates and amounts of distributions to the Tribe, distinguishing current income, accumulated income, and distributions of principal; and

(iv) identify any invasions or repayments of principal during the relevant period and record provisions the Tribe has made for repayment or restoration of principal.

(B) Prior to distributing principal from any Trust Fund, the investment management firm shall notify the Secretary of the proposed distribution and the Tribe's proposed use of such funds, following procedures to be agreed upon by the investment management firm, the Secretary, and the Tribe. The Secretary shall have 15 days within which to object in writing to any such invasion of principal. Failure to object will be deemed approval of the distribution.

(C) All Trust Funds held and managed by any investment management firm shall be audited annually by a certified public accounting firm approved by the Secretary, and a copy of the annual audit shall be submitted to the Tribe and to the Secretary within four months following the close of the Trust Fund's fiscal year.

(l) REPLACEMENT OF INVESTMENT MANAGEMENT FIRM AND MODIFICATION OF INVESTMENT MANAGEMENT PLAN.—The Tribe shall not replace the investment management firm approved by the Secretary without prior written notification to the Secretary and approval by the Secretary of any investment management firm chosen by the Tribe as a replacement. Such Secretarial approval shall be given or denied in accordance with the Secretarial approval provisions contained in subsection (b)(5)(D) of this section. The Tribe and its investment management firm shall also notify the Secretary in writing of any revisions in the investment management plan which materially increase investment risk or significantly change the investment management plan, or the agreement, made in consultation with the Secretary pursuant to which the outside management firm was retained.

(m) TRUST FUNDS NOT COUNTED FOR CERTAIN PURPOSES; USE AS MATCHING FUNDS.—None of the funds, assets, income, payments, or distributions from the trust funds established pursuant to this section shall at any time affect the eligibility of the Tribe or its Members for, or be used as a basis for denying or reducing funds to the Tribe or its Members under any Federal, State, or local program. Distributions from these Trust Funds may be used as matching funds, where appropriate, for Federal grants or loans.

SEC. 12. ESTABLISHMENT OF EXPANDED RESERVATION.

(a) EXISTING RESERVATION.—The Secretary is authorized to receive from the State, by such transfer document as the Secretary and the State shall approve, all rights, title, and interests of the State in and to the Existing Reservation to be held by the United States as trustee for the Tribe, and, effective on the date of such transfer, the obligation of the State as trustee for the Tribe with respect to such land shall cease.

(b) EXPANDED RESERVATION.—(1) The Existing Reservation shall be expanded in the manner prescribed by the Settlement Agreement.

(2) Within 180 days following the date of the enactment of this Act, the Secretary, after consulting with the Tribe, shall ascertain the boundaries and area of the Existing Reservation. In addition, the Secretary, after consulting with the Tribe, shall engage a professional land planning firm as provided in the Settlement Agreement. The Secretary shall bear the cost of all services rendered pursuant to this section.

(3) The Tribe may identify, purchase and request that the Secretary place into reservation status, tracts of lands in the manner prescribed by the Settlement Agreement. The Tribe may not request that any land be placed in reservation status, unless these lands were acquired by the Tribe and qualify for reservation status in full compliance with the Settlement Agreement, including section 14 thereof.

(4) The Secretary shall bear the cost of all title examinations, preliminary subsurface soil investigations, and level one environmental audits to be performed on each parcel contemplated for purchase by the Tribe or the Secretary for the Expanded Reservation, and shall report the results to the Tribe. The Secretary's or the Tribe's payment of any option fee and the purchase price may be drawn from the Catawba Land Acquisition Trust Fund.

(5) The total area of the Expanded Reservation shall be limited to 3,000 acres, including the Existing Reservation, but the Tribe may exclude from this limit up to 600 acres of additional land under the conditions set forth in the Settlement Agreement. The Tribe may seek to have the permissible area of the Expanded Reservation enlarged by an additional 600 acres as set forth in the Settlement Agreement.

(6) All lands acquired for the Expanded Reservation may be held in trust together with the Existing Reservation which the State is to convey to the United States.

(7) Nothing in this Act shall prohibit the Secretary from providing technical and financial assistance to the Tribe to fulfill the purposes of this section.

(c) EXPANSION ZONES.—(1) Subject to the conditions, criteria, and procedures set forth in the Settlement Agreement, the Tribe shall endeavor at the outset to acquire contiguous tracts for the Expanded Reservation in the "Catawba Reservation Primary Expansion Zone", as defined in the Settlement Agreement.

(2) Subject to the conditions, criteria, and procedures set forth in the Settlement Agreement, the Tribe may elect to purchase contiguous tracts in an alternative area, the "Catawba Reservation Secondary Expansion Zone", as defined in the Settlement Agreement.

(3) The Tribe may propose different or additional expansion zones subject to the authorizations required in the Settlement Agreement and the State Act.

(d) NON-CONTIGUOUS TRACTS.—The Tribe, in consultation with the Secretary, shall take such actions as are reasonable to expand the Existing Reservation by assembling a composite tract of contiguous parcels that border and surround the Existing Reservation. Before requesting that any non-contiguous tract be placed in Reservation status, the Tribe shall comply with section 14 of the Settlement Agreement. Upon the approval of the Tribe's application under and in accordance with section 14 of the Settlement Agreement, the Secretary, in consultation with the Tribe, may proceed to place non-contiguous tracts in Reservation status. No purchases of non-contiguous tracts shall be made for the Reservation except as set forth in the Settlement Agreement and the State Act.

(e) VOLUNTARY LAND PURCHASES.—(1) The power of eminent domain shall not be used by the Secretary or any governmental authority in acquiring parcels of land for the benefit of the Tribe, whether or not the parcels are to be part of the Reservation. All such purchases shall be made only from willing sellers by voluntary conveyances subject to the terms of the Settlement Agreement.

(2) Notwithstanding any other provision of this section and the provisions of the first section of the Act of August 1, 1888 (ch. 728, 25 Stat. 357; 40 U.S.C. 257), and the first section of the Act of February 26, 1931 (ch. 307, 46 Stat. 1421; 40 U.S.C. 258a), the Secretary or the Tribe may acquire a fractional interest in land otherwise qualifying under section 14 of the Settlement Agreement for treatment as Reservation land for the benefit of the Tribe from the ostensible owner of the land if the Secretary or the Tribe and the ostensible owner have agreed upon the identity of the land to be sold and upon the purchase price and other terms of sale. If the ostensible owner agrees to the sale, the Secretary may use condemnation proceedings to perfect or clear title and to acquire any interests of putative co-tenants whose address is unknown or the interests of unknown or unborn heirs or persons subject to mental disability.

(f) TERMS AND CONDITIONS OF ACQUISITION.—All properties acquired by the Tribe shall be acquired subject to the terms and conditions set forth in the Settlement Agreement. The Tribe and the Secretary, acting on behalf of the Tribe and with its consent, are also authorized to acquire Reservation and non-Reservation lands using the methods of financing described in the Settlement Agreement.

(g) AUTHORITY TO ERECT PERMANENT IMPROVEMENTS ON EXISTING AND EXPANDED RESERVATION LAND AND NON-RESERVATION LAND HELD IN TRUST.—Notwithstanding any other provision of law or regulation, the Attorney General of the United States shall approve any deed or other instrument which conveys to the United States lands purchased pursuant to the provisions of this section and the Settlement Agreement. The Secretary or the Tribe may erect permanent improvements of a substantial value, or any other improvements authorized by law on such land after such land is conveyed to the United States.

(h) EASEMENTS OVER RESERVATION.—(1) The acquisition of lands for the Expanded Reservation shall not extinguish any easements or rights-of-way then encumbering such lands unless the Secretary or the Tribe enters into a written agreement with the owners terminating such easements or rights-of-way.

(2)(A) The Tribe, with the approval of the Secretary, shall have the power to grant or convey easements and rights-of-way, in a manner consistent with the Settlement Agreement.

(B) Unless the Tribe and the State agree upon a valuation formula for pricing easements over the Reservation, the Secretary shall be subject to proceedings for condemnation and eminent domain to acquire easements and rights of way for public purposes through the Reservation under the laws of the State in circumstances where no other reasonable access is available.

(C) With the approval of the Tribe, the Secretary may grant easements or rights-of-way over the Reservation for private purposes, and implied easements of necessity shall apply to all lands acquired by the Tribe, unless expressly excluded by the parties.

(i) JURISDICTIONAL STATUS.—Only land made part of the Reservation shall be governed by the special jurisdictional provisions set forth in the Settlement Agreement and the State Act.

(j) SALE AND TRANSFER OF RESERVATION LANDS.—With the approval of the Secretary, the Tribe may sell, exchange, or lease lands within the Reservation, and sell timber or other natural resources on the Reservation under circumstances and in the manner prescribed by the Settlement Agreement and the State Act.

(k) TIME LIMIT ON ACQUISITIONS.—All acquisitions of contiguous land to expand the Reservation or of non-contiguous lands to be placed in Reservation status shall be completed or under contract of purchase within 10 years from the date the last payment is made into the Land Acquisition Trust; except that for a period of 20 years after the date the last payment is made into the Catawba Land Acquisition Trust Fund, the Tribe may, subject to the limitation on the total size of the Reservation, continue to add parcels to up to two Reservation areas so long as the parcels acquired are contiguous to one of those two Reservation areas.

(l) LEASES OF RESERVATION LANDS.—The provisions of the first section of the Act of August 9, 1955 (ch. 615, 69 Stat. 539; 25 U.S.C. 415) shall not apply to the Tribe and its Reservation. The Tribe is authorized to lease its Reservation lands for terms up to but not exceeding 99 years, with or without the approval of the Secretary. With regard to any lease of Reservation lands not approved by the Secretary, the Secretary shall be exculpated by the Tribe from any liability arising out of any loss incurred by the Tribe as a result of the unapproved lease.

(m) NON-APPLICABILITY OF BIA LAND ACQUISITION REGULATIONS.—The general land acquisition regulations of the Bureau of Indian Affairs, contained in part 151 of title 25, Code of Federal Regulations, shall not apply to the acquisition of lands authorized by this section.

SEC. 13. NON-RESERVATION PROPERTIES.

(a) ACQUISITION OF NON-RESERVATION PROPERTIES.—The Tribe may draw upon the corpus or accumulated income of the Catawba Land Acquisition Trust Fund or the Catawba Economic Development Trust Fund to acquire and hold parcels of real estate outside the Reservation for the purposes and in the manner delineated in the Settlement Agreement. Jurisdiction and status of all non-Reservation lands shall be governed by section 15 of the Settlement Agreement.

(b) AUTHORITY TO DISPOSE OF LANDS.—Notwithstanding any other provision of law, the Tribe may lease, sell, mortgage, restrict, encumber, or otherwise dispose of such non-Reservation lands in the same manner as other persons and entities under State law, and the Tribe as land owner shall be subject to the same obligations and responsibilities as other persons and entities under State, Federal, and local law.

(c) RESTRICTIONS.—Ownership and transfer of non-Reservation parcels shall not be subject to Federal law restrictions on alienation, including (but not limited to) the restrictions imposed by Federal common law and the provisions of the section 2116 of the Revised Statutes (25 U.S.C. 177).

SEC. 14. GAMES OF CHANCE.

(a) INAPPLICABILITY OF INDIAN GAMING REGULATORY ACT.—The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not apply to the Tribe.

(b) GAMES OF CHANCE GENERALLY.—The Tribe shall have the rights and responsibilities set forth in the Settlement Agreement and the State Act with respect to the conduct of games of chance. Except as specifically set forth in the Settlement Agreement and the State Act, all laws, ordinances, and regulations of the State, and its political subdivisions, shall govern the regulation of gambling devices and the conduct of gambling or wagering by the Tribe on and off the Reservation.

SEC. 15. GENERAL PROVISIONS.

(a) SEVERABILITY.—If any provision of section 4(a), 5, or 6 of this Act is rendered invalid by the final action of a court, then all of this Act is invalid. Should any other section of this Act be rendered invalid by the final action of a court, the remaining sections of this Act shall remain in full force and effect.

(b) INTERPRETATION CONSISTENT WITH SETTLEMENT AGREEMENT.—To the extent possible, this Act shall be construed in a manner consistent with the Settlement Agreement and the State Act. In the event of a conflict between the provisions of this Act and the Settlement Agreement or the State Act, the terms of this Act shall govern. In the event of a conflict between the State Act and the Settlement Agreement, the terms of the State Act shall govern. The Settlement Agreement and the State Act shall be maintained on file and available for public inspection at the Department of the Interior.

(c) IMPACT OF SUBSEQUENTLY ENACTED LAWS.—No law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) affects or preempts the civil, criminal, or regulatory jurisdiction of the State, including without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.

(d) ELIGIBILITY FOR CONSIDERATION TO BECOME AN ENTERPRISE ZONE OR GENERAL PURPOSE FOREIGN TRADE ZONE.—Notwithstanding the provisions of any other law or regulation, the Tribe shall be eligible to become, sponsor and operate (1) an "enterprise zone" pursuant to title VII of the Housing and Community Development Act of 1987 (42 U.S.C. 11501–11505) or any other applicable Federal (or State) laws or regulations; or (2) a "foreign-trade zone" or "subzone" pursuant to the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u) and the regulations thereunder, to the same extent as other federally recognized Indian Tribes.

(e) GENERAL APPLICABILITY OF STATE LAW.—Consistent with the provisions of section 4(a)(2), the provisions of South Carolina Code Annotated, section 27–16–40, and section 19.1 of the Settlement Agreement are approved, ratified, and confirmed by the United States, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.

(f) SUBSEQUENT AMENDMENTS TO THE SETTLEMENT AGREEMENT OR STATE ACT.—Consent is hereby given to the Tribe and the State to amend the Settlement Agreement and the State Act if consent to such amendment is given by both the State and the Tribe, and if such amendment relates to—

(1) the jurisdiction, enforcement, or application of civil, criminal, regulatory, or tax laws of the Tribe and the State;

(2) the allocation or determination of governmental responsibility of the State and the Tribe over specified subject matters or specified geographical areas, or

both, including provision for concurrent jurisdiction between the State and the Tribe;

(3) the allocation of jurisdiction between the tribal courts and the State courts; or

(4) technical and other corrections and revisions to conform the State Act and the Agreement in Principle attached to the State Act to the Settlement Agreement.

SEC. 16. TAX TREATMENT OF INCOME AND TRANSACTIONS.

Notwithstanding any provision of the State Act, Settlement Agreement, or this Act (including any amendment made under section 15(f)), nothing in this Act, the State Act, or the Settlement Agreement shall amend or alter the Internal Revenue Code of 1986, as amended, or any rules or regulations promulgated thereunder.

SEC. 17. EFFECTIVE DATE.

Except for sections 7, 8, and 12, the provisions of this Act shall become effective upon the transfer of the Existing Reservation under section 12 to the Secretary.

Purpose

The purposes of H.R. 2399 are to settle the Catawba Indian Tribe's land claims in the State of South Carolina and to restore the Tribe to federally acknowledged status.

Background and Need

1. THE 18TH CENTURY

In the middle of the 18th Century, the Catawba Indians numbered about 1,500. In treaties with King George III in 1760 and 1763, the Catawbas obtained recognized title to a 144,000 acre tract near the border of North and South Carolina. The Treaty of Pine Tree Hill, negotiated in 1760, was confirmed in the 1763 Treaty of Augusta. Under the terms of the treaties, the Tribe sought and was guaranteed protection from the onslaught of non-Indian settlement and was granted title to the 144,000 acre tract forever by the King, through his Superintendent of Indian Affairs, and the Governors of the Southern Provinces. The United States assumed the British obligations under these two treaties after the American Revolutionary War. (see *Strother* v. *Lucas,* 37 (9 Pet.) 711, 734 (1835)).

2. THE 19TH CENTURY

The Treaty of Nation Ford was negotiated in 1840 between the Catawba Tribe and the State of South Carolina. The United States did not participate in the negotiation which attempted to extinguish forever the Tribe's title to the 144,000 acre tract. Subsequent to the Treaty of Nation Ford, the State of South Carolina enacted a series of laws which leased Catawba lands to non-Indians. These laws were enacted without regard to the Indian Non-Intercourse Act of 1790 which prohibited purchase or lease of Indian lands without federal consent. No federal consent was ever given for the leasing nor did the United States attempt to intercede on the Tribe's behalf. At no time during the 19th century did the United States attempt to uphold or carry out the 18th century British treaty obligations it had assumed. In 1848 and again in 1854, Congress appropriated funds to remove the Catawbas to the West, but the removal was never carried out. In 1887, the Chief of the Catawbas petitioned the Department of the Interior to resolve the

Tribe's claim to the 144,000 acre reservation. No action was taken on the petition. Another petition to the Department of the Interior was submitted in 1895 on the land claim.

3. THE 20TH CENTURY

In 1905, 1908, and 1910 the Commissioner of Indian Affairs was again petitioned to look at the Catawba case to no avail. Between 1920 and 1943 repeated inquiries were made by the Tribe to the Office of Indian Affairs on the Catawba Indian claim. Finally, in December of 1943, the State of South Carolina, the Catawba Indian Tribe and the Office of Indian Affairs entered into a Memorandum of Understanding (MOU) under which the State paid $75,000 for the purchase of 3,434 acres for the Catawbas to farm. The Office of Indian Affairs agreed to provide services and supervision to the Tribe. In 1959, the Catawba tribe was "terminated", its assets were divided up and the federal trust responsibility was extinguished upon the implementation of the Catawba Division of Assets Act (P.L. 86–322). This failed policy of termination has since been expressly repudiated by the Congress and the Executive Branch. The Tribe was assured by the Bureau of Indian Affairs at the time of termination that its claim to the 144,000 acre reservation would be preserved. Tribal concerns about the land claim were never provided to the Congress during the deliberations on the Act. No steps were taken in the Act to preserve the land claims or compensate the Tribe for the taking.

4. THE CATAWBA LAND CLAIM

From the time of the Revolutionary War to the present day, the Catawba Indians have maintained that they were wrongfully dispossessed of their 144,000 acre reservation. In 1977, a formal request for litigation assistance was submitted by the Tribe to the Department of the Interior. While the Interior Solicitor found the Tribe had a strong case and that the Treaty of Nation Ford was likely invalid under the Non-Intercourse Act, the Justice Department did not want to sue private landholders and refused to pursue the case. In 1980, the Catawba Indian tribe filed a suit on their own behalf suing 76 individuals and corporations seeking a return of the Treaty reservation and trespass damages. The Defendants were sued as representatives of the over sixty thousand non-Indians currently occupying the 144,000 acre tract. In 1991, the federal court refused to allow the case to proceed as a class action. This decision started the running of a statute of limitations and left the Tribe no choice but to sue each occupant of the Treaty Reservation individually. In the spring and summer of 1992, the Tribe finalized its preparations to sue 61,767 individuals for possession of the land they occupied before the October 18, 1992 deadline. Congress, in July of 1992, extended the statute of limitations until October 1, 1993. (P.L. 102–339). On February 20, 1993, the Catawba Indian Tribe in a general referendum voted in favor of a Settlement Agreement which had been negotiated with the State of South Carolina. The State of South Carolina approved the Agreement on June 14, 1993.

5. H.R. 2399

H.R. 2399 was introduced by Congressman Derrick of South Carolina on June 10, 1993. The purposes of the bill are to approve the Settlement Agreement between the Tribe and the State of South Carolina; to authorize and direct the Secretary of the Interior to implement the terms of the Settlement Agreement; to authorize appropriations; to remove the cloud on titles in the State of South Carolina resulting from the Tribe's land claim; and to restore the trust relationship between the Tribe and the United States. In essence, the bill and the Settlement Agreement have two major elements: (1) the restoration of the Catawba Tribe to federally recognized status, and (2) extinguishment of the Tribe's land claims. The bill provides that the Tribe will receive $32 million from the federal government and $18 million from the State and private parties in exchange for the Tribe's agreement to dismiss the land claim. Several unique jurisdictional provisions are contained within the Settlement Agreement which the Committee has included in this Report. The Settlement Agreement also includes provisions for the establishment of a reservation, the creation of several trust funds and a partial waiver of the Indian Gaming Regulatory Act.

The fundamental premise of the bill is that the Federal government breached its trust responsibilities to the Catawbas in the 19th Century by allowing the State to lease the 144,000 acre tract. The Federal government also breached its trust responsibility to the Catawbas in the 20th Century when it failed to pursue the Tribe's claim at the time of termination and afterward. The State is liable to the Catawbas for the taking of the 144,000 acres after the 1840 Treaty of Nation Ford. The bill enables the Tribe to regain Federal recognition and be recompensed for the taking of its original reservation.

COMMITTEE AMENDMENT

The Committee Substitute makes several technical and substantive changes to the bill. One major difference between the bill as introduced and the substitute is the incorporation by reference of provisions in the Settlement Agreement and the State Act rather than setting these provisions forth in specific federal statutory law. A second difference is the deletion of all references to the Internal Revenue Code. Explanations are noted below:

Sections 1 and 2. No changes.

Section 3. *Definitions*—Definitions are provided for the following terms: Tribe, Claim or Claims, Executive Committee, Existing Reservation, General Council, Member, Reservation or Expanded Reservation, Secretary, Service Area, Settlement Agreement, State, Suit or Suits, Termination Act, Transfer, and Trust Funds.

The Committee substitute amends Section 3 to add the term "service area." The term defines the Catawba health care service area as the State of South Carolina and six outlying counties in the State of North Carolina. This definition creates a service area which will enable tribal Members in need of health services to receive assistance.

Section 4. *Restoration of Federal trust relationship.*—This section restores the Federal trust relationship between the Catawba Tribe and the United States, making the Tribe eligible for federal benefits and services. The Settlement Agreement and the State Act are approved and ratified. It repeals the Catawba Termination Act. This section includes provisions to protect existing property rights.

The Committee substitute amends Section 4 with several substantive changes. First, in the area of health services, Section 4(c)—Health Cards has been deleted. The Indian Health Service has advised the Committee that the issuance of health cards as provided in H.R 2399 would establish an exclusive entitlement for the Catawba Tribe, unavailable to other members of federally recognized Indian tribes, and that the cost for unlimited health care such as would be available under a health card system would be prohibitive and detrimentally impact the Indian Health Service's ability to serve Indian country. Therefore, the Committee substitute provides that Catawba tribal members will be eligible for all federal health benefits and services available to other Indian people based on their status as Indians.

Second, in the area of educational funding, Section 4(g)—Impact Aid has been deleted. The Committee received comments expressing concern that the impact aid provisions of the bill attempts to redefine standards required under Section 2 of the Public Law 874 (20 U.S.C. 236) for school districts. This provision would have allowed an agency to be eligible for impact aid funds not previously available. Therefore, this provision was deleted from the Committee substitute.

Section 5. *Settlement funds.*—This section authorizes the appropriation of $32 million of federal funds to be disbursed in four installments of $8 million to the Catawba Indian tribes. This section also provides that the State of South Carolina shall contribute another $18 million to the Tribe.

The Committee amendment deletes a provision that private funds paid toward the settlements should be treated as charitable contributions or litigation payments for federal tax purposes. The Secretary is instructed to hold all the funds received pursuant to this Act and distribute them according to section 6(g). The Secretary is not liable for the funds until they are received. The Committee substitute modifies the payment schedule and the payment amounts to be paid out by the Federal government from five to four installments of 8,000,000 rather than 6,400,000. This change in the Committee substitute makes the four installments payment schedule the same for the State of South Carolina and the Federal government.

The Committee substitute includes an additional provision, Section 5(e). This provision limits the liability and accountability of the Secretary with regard to funds collected, deposited, and managed until the funds are received by the Secretary. This Committee substitute provision ensures that the Secretary will not be liable for any loss of funds not under the control of the Secretary.

Section 6. *Ratification and extinguishment.*—This section ratifies prior transfers of land or natural resources by the Tribe. It extinguishes aboriginal title, hunting, fishing or water rights or natural resources claims by the Tribe against the United States and any

State. It provides the Tribe with a cause of action against the United States and the State of South Carolina. Personal claims of individual Indians are not affected by the Act. It also provides for attorney fees for the Tribe.

The Committee's substitute adds two new provisions to this section. First, section 5(i) which establishes a cause of action in the U.S. Court of Federal Claims against the United States for nonpayment of the federal share of the settlement funds authorizes in Section 5(a). Second, Section 5(j) creates a similar cause of action in the United States District Court against the State of South Carolina for failure to pay as directed by section 5(b).

Section 7. *Base membership roll.*—Subsection (a) sets out the base membership roll criteria of the Tribe. In order to be a member a person must be: (1) listed on the 1961 membership roll or if the person is not on the 1961 roll then the Executive Committee must determine that the person should have been on the 1961 roll; or (2) a lineal descendant of someone on the base membership roll. The Secretary is to publish the rolls in the Federal Register, and within 120 days after publication, the Secretary shall publish a proposed final membership roll. Appeals are to be resolved within 90 days following publication. The bill provides that the Tribe shall have the right to determine future membership.

The Committee substitute changes this section to cover a base membership roll rather than a tribal membership roll in order to comply with the enrollment criteria guidelines of the Department of Interior—Bureau of Indian Affairs. Also, the Committee substitute adds Federal Register notice procedures to further alert the Members that a base membership roll is being compiled by the Tribe.

Section 8. *Transitional and provisional government.*—The Tribe shall adopt a constitution within 24 months of enactment. Until that time, the Executive Committee is recognized as the provisional government of the Catawba Indian tribe.

The Committee substitute eliminates the time constraint placed on the current Executive Committee as a transitional governing body. Therefore, rather than governing for a period not to exceed 24 months after enactment of the Act, the current Executive Committee can govern until an election of tribal officers is held under the new constitution.

Section 9. *Tribal constitution and government.*—The Tribe may organize under the Indian Reorganization Act. Also, within 180 days after enactment, a constitution is to be drafted and distributed. Within 90 days of a distribution, an election to adopt the constitution must be held. The constitution must be adopted by a majority vote.

Section 10. *Administrative provisions relating to jurisdiction, taxation, and other measures.*—All matters involving civil, criminal, or regulatory jurisdiction are referenced and governed by the Settlement Agreement and State Act, as well as, all taxation matters, exceptions to the Indian Child Welfare Act, and the Tribe's election to organize under the Act of June 18, 1934. A provision making the Indian Tribal Government Tax Status Act applicable to the Catawba Tribe was deleted from the Committee substitute. Further, the Indian Self-Determination and Education Assistance Act of

1975 applies to the Tribe so long as its application is not inconsistent with the Settlement Agreement and this Act.

The Committee substitute deletes the original Sections 10, 11, 12, 17, 18(b) of H.R. 2399 as introduced. Instead the substitute references with the Settlement Act and State Act as to tribal jurisdiction, whether criminal, civil or regulatory. It also incorporates by reference taxation provisions, limitations on the applicability of the Indian Child Welfare Act and the Indian Reorganization Act contained in the Settlement Agreement and State Act.

Section 11. *Tribal trust funds.*—This section provides for the creation of trust funds which at the Tribe's option, may be managed by an outside manager. Funds include Land Acquisition Trust, Economic Development Trust Fund, Education Trust Fund, Social Services and Elderly Assistance Fund, an Education Fund, and Per Capita Trust Fund. One-time payments to tribal members are authorized to be paid from the Per Capita Trust Fund which shall not exceed $7,500,000. Payments from trust funds not counted for eligibility for federal benefits.

The Committee substitute renames Section 11 to read Tribal Trust Funds and the language from the former section is referenced in the Committee substitute Section 109 to the Settlement Agreement and the State Act. The language for the former Section 13 is inserted with a few technical changes.

Section 12. *Establishment of expanded reservation.*—This section permits the Catawba Indian tribe to acquire of up to 3600 acres of land in the defined area of York and Lancaster Counties and to place it into trust status so long as the purchases are made in full compliance of the Settlement Agreement. In addition, the Tribe may acquire 600 acres of undevelopable land which shall not be considered a part of the 3,600 acres permitted under the agreement. Purchases must be from willing sellers. A provision allowing sellers to treat transactions as involuntary conversions under the Internal Revenue Code was deleted in the Committee substitute.

The Committee substitute renames Section 12 to read Establishment of Expanded Reservation and the language from the former section is referenced in the Committee substitute Section 10 to the Settlement Agreement and the State Act. Then language from the former Section 14 is inserted with a few substantive changes regarding the Tribe's ability to expand the Reservation on non-contiguous tracts. The Tribe must comply with the Settlement Agreement and State Act prior to seeking Secretarial approval to place land in trust.

Section 13. *Non-reservation.*—The Catawbas are free to acquire non-reservation properties, but are obligated to make payments in lieu of taxes if the acquisition of the lands removes the property from tax rolls. Jurisdiction and status of all non-reservation lands shall be governed by Section 15 of the Settlement Agreement.

The Committee substitute renames Section 13 to read Non-Reservation Properties. Language from the Section 15 of the original bill is inserted with a few substantive changes. First, the original Section 15(b) is deleted because it refers to state jurisdiction which is referenced in the Committee substitute as new Section 10 to the Settlement Agreement and the State Act. Second, the Committee substitute Section 13(a) regarding acquisition of non-reservation

properties also refers to the Settlement Agreement regarding jurisdiction and status of the lands.

Section 14. *Games of chance.*—The Indian Gaming Regulatory Act shall not apply. The Tribe is authorized to establish two high stakes bingo games under the terms of state bill. One must be within the claim area, the other facility must have the approval of the country and any municipality in which located.

The Committee substitute renames Section 14 to read Games of Chance. Language from the original bill's section 16 is inserted with no changes.

Section 15. *General provisions.*—The entire bill is invalid if the extinguishment provisions or the restoration provisions are invalidated. Subsequent general laws preempting state jurisdiction are not applicable to the Catawba Tribe or the State of South Carolina. The Reservation is eligible for special status as an Enterprise or Foreign Trade zone. When a conflict arises the terms of this Act govern over the Settlement Act and the State Act. Those documents must be filed and available for public inspection at the Department of the Interior.

The Committee substitute renames Section 15 to read General Provisions and then deletes all the former provisions, as follows: Section 15(a) Environmental Laws; Section 15(b) Building Codes; Section 15(c) Planning and Zoning; Section 15(d) Health Codes; Section 15(e) Hunting and Fishing; Section 15(f) Riparian Rights; and Section 15(g) Alcoholic Beverages. These deleted provisions are addressed in Section 10 of the Committee substitute and the actual language of those sections is referenced to the Settlement Agreement and the State Act.

The Committee substitute then inserts language from the original bill Section 18 in place of those deleted provisions. However, the Committee substitute does not take Section 18 as a whole, rather several substantive changes are made. First, the former Section 18(a) was deleted and referenced to the Settlement Agreement and the State Act in the Committee substitute Section 10. The remaining clauses are reordered.

Second, the Committee substitute inserts an additional provision as Section 15(e). This new provision requires that the provisions of the State of South Carolina Code Annotated and the Settlement Agreement be complied with in the same manner as if they had to be enacted into Federal law.

Third, the Committee substitute inserts another provision as Section 15(f). This section outlines the procedures available to the Tribe and the State to amend the Settlement Agreement and State Act without returning to the Congress to amend this Act.

Section 16. A new section was added by the House Ways and means Committee entitled "Tax Treatment of Income and Transactions." Under this provision, nothing in the State Act, the Settlement Agreement or this act is to alter or amend the Internal Revenue Code.

Section 17. The Committee amendment provides that the provisions of the Act become effective upon the transfer date of the Existing reservation except that sections 7 and 8 which deal with the organization of the tribal government become effective upon enactment.

The Committee notes that this legislation creates an unprecedented jurisdictional scheme between the State of South Carolina and the Catawba Indian tribe which is unique in Federal Indian law. The Committee understands that the Catawba Tribe has compromised certain principles in an effort to reach this settlement. The Committee views the Catawba as a unique situation because it is the only terminated tribe with a Non-intercourse land claim to which the state statutes of limitation have been made applicable; it involves a British treaty and a treaty between a tribe and a state; during the 16 years that the Tribe was federally recognized during this Century, the recognition was subject to a Memorandum of Understanding between the State, the Tribe, and the Federal government; and the Tribe's land claim is located in a somewhat urban area and has been extensively settled by non-Indians. The Committee understands that the Settlement Agreement was entered into to avoid the chaos which the filing of over 60,000 lawsuits would bring. In spite of these unusual circumstances, the Committee does not favor compromising tribal sovereignty as part of settlement legislation. The Committee firmly believes that tribal sovereignty is not a negotiable term in any settlement. The Committee will not use this Act as a procedent for future Indian settlements. Other tribes should view this as a South Carolina-Catawba specific bill and not as a model that the Committee in any way recommends or endorses.

The Committee notes that the taxation benefits the Tribe was expecting were deleted. The Committee asserts that the Catawba Tribe should be eligible for treatment as a Tribe under the Indian Tribal Government Tax Status Act upon enactment pursuant to the Internal Revenue Code.

The Committee asserts that the Catawba should be granted the same Federal tax treatment as other Indian tribes. The Committee believes that the per capita distributions to individual tribal members should be tax exempt as are other distributions and notes that the Tribe will work with the Ways and Means Committee toward this end. The Committee supports the efforts of the Catawba Indian Tribe to secure the tax provisions which are contained in the Settlement Agreement including the treatment of private contributions as charitable deductions and conveyances of land as involuntary conversions. Where it is possible, the Committee supports the retroactive application of such provisions in the interest of equity.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

Section 1 cites the Act as the "Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993".

SECTION 2. DECLARATION OF POLICY, CONGRESSIONAL FINDINGS AND PURPOSE

Section 2 declares the policy of the Congress.

Subsection (a) provides the Findings of the Congress which delineates the history of the Catawba land claim.

Subsection (b) provides the Purpose of the Act which are to (1) ratify the Settlement agreement between the tribe and the non-In-

dian parties; (2) direct the Secretary to implement the Agreement; (3) authorize appropriations and actions; (4) remove the cloud on South Carolina land titles resulting from the Catawba's claim.

SECTION 3. DEFINITIONS

Section 3 provides the definitions of various terms used under the Act.

SECTION 4. RESTORATION OF FEDERAL TRUST RELATIONSHIP

Subsection (a) provides for the restoration of the Federal trust relationship between the Catawba tribe and the United States and further provides that the Settlement Agreement and the State Act are approved and shall be complied with as if they had been enacted into Federal law.

Subsection (b) makes the Catawba tribe eligible for Federal benefits and services which flow to recognized Indian tribes.

Subsection (c) repeals the Catawba Termination Act.

Subsection (d) provides that the Act is not to affect existing property rights.

Subsection (e) provides that the jurisdiction of the tribe is set forth in this Act.

SECTION 5. SETTLEMENT FUNDS

Subsection (a) authorizes to be appropriated $32 million of Federal funds.

Subsection (b) provides that the Federal funds are to be disbursed in four annual installments of $8 million.

Subsection (c) provides that private funds which are paid for the settlement are to be treated as either a payment in settlement of litigation or a charitable contribution for Federal tax purposes.

Subsection (d) provides that the Secretary is to collect $18 million in contributions toward settlement received by the State and hold them in trust for the tribe.

Subsection (e) provides that the Secretary shall not be accountable or incur liability for the management or collection of the non-Federal contributions until they are held in trust.

SECTION 6. RATIFICATION OF PRIOR TRANSFERS; EXTINGUISHMENT OF ABORIGINAL TITLE, RIGHTS AND CLAIMS

Subsection (a) provides that prior transfers of land or natural resources by the Tribe are ratified.

Subsection (b) provides that any aboriginal title claims are extinguished.

Subsection (c) provides that all claims pursuant to land or natural resources transfers by the Tribe against the United States or any State are deemed to be extinguished as of the date of the transfer.

Subsection (d) provides that all land title claims by the tribe are extinguished, and that any hunting, fishing, water rights or other natural resource claims are extinguished.

Subsection (e) provides that the United States is barred from asserting claims on behalf of the Tribe arising before the date of enactment.

Subsection (f) provides that the Section is not to be construed to diminish the existing reservation or fee lands owned by members.

Subsection (g) provides that parties to the suit are to pay their own attorney's fees, but the Secretary is to approve and pay the Tribe's attorneys in an amount not to exceed $5 million.

Subsection (h) provides that personal claims of individual Indians are not affected by the Act.

Subsection (i) provides that the Tribe may sue the U.S. for failure to provide federal payments.

Subsection (j) provides that the Tribe may sue the State for failure to provide payments and the State waives 11th amendment defenses.

SECTION 7. TRIBAL MEMBERSHIP

Subsection (a) provides that the conditions under which a person may be eligible for inclusion on the base membership roll, as follows: (1) living on the date of enactment of this Act and is listed on the membership roll published by the Secretary on February 25, 1961 (26 Federal Register 1680–88); (2) the Executive Committee determines that the individual should have been included on the membership roll at that time but was not; or (3) the person is a lineal descendant of a Member whose name appeared or should have appeared on the Secretary's list.

Subsection (b) requires the Secretary to publish in the Federal Register and in three newspapers within the Tribe's service area a notice within 90 days that provides the following: (1) that the base roll is being prepared by the Tribe and will be open for 90 days; (2) the requirements for inclusion on base roll; (3) the Secretary's list published on February 25, 1961; (4) the current membership roll as prepared by the Tribe; and (5) the name and address of person to contact.

Subsection (c) sets forth the steps to finalize the base membership roll and outlines the appeal procedure to the Executive Committee which must be undertaken within 60 days after publication of a final base membership roll.

Subsection (d) provides that the Tribe shall determine future membership and further requires all future members to be a lineal descendant of a person on the base membership roll and to demonstrate continued maintenance of a political relations with the Tribe.

SECTION 8. TRANSITIONAL AND PROVISIONAL GOVERNMENT

Subsection (a) requires the Tribe to adopt a new constitution within 24 months after date of enactment of the Act.

Subsection (b) provides that, until the election of tribal officers under a new constitution is approved, the existing constitution will remain in effect and the current Executive Committee will be the provisional and transitional governing body of the Tribe. The Executive Committee has the authority to represent the Tribe in the implementation of this Act, enter into agreements, contracts, administer programs, determine tribal membership, and develop the new constitution.

SECTION 9. TRIBAL CONSTITUTION AND GOVERNANCE

Subsection (a) authorizes the Tribe to organize under the 1934 Indian Reorganization Act.

Subsection (b) provides for the distribution of the proposed constitution and the election to adopt such constitution.

Subsection (c) establishes requirements for ratification of constitution and, in the event of failure, for preparing and voting on a revised constitution.

Subsection (d) provides that tribal officials will be elected within 120 days after the new constitution is adopted.

Subsection (e) provides for extensions of time for the constitutional process in (b) and (c) on written agreement of the Secretary and the Executive Committee.

SECTION 10. JURISDICTION AND GOVERNANCE OF THE RESERVATION

Subsection (1) directs that all matters involving tribal powers, immunities, and jurisdiction, whether civil, criminal, or regulatory, shall be governed by the Settlement Agreement and the State Act, unless otherwise provided.

Subsection (2) directs that all matters related to taxation involving the Tribe shall be governed by the Settlement Act and the State Act, unless otherwise provided.

Subsection (3) directs that all matters pertaining to governance and regulation, including environmental and riparian water rights, on the Reservation shall be governed by the Settlement Agreement and State Act, including Section 17 of the Settlement Agreement and Section 27–16–120 of the State Act, unless otherwise provided.

Subsection (4) provides that the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.) shall apply to Catawba Indian children except as provided in the Settlement Agreement.

Subsection (5) provides that the Tribe may be authorized to exercise authority consistent with the Settlement agreement and the State Act, regardless of whether the Tribe elects to reorganize under the Act of June 18, 1934.

Subsection (6) directs that the Indian Tribal Government Tax Status Act shall apply to the Tribe and its Reservation. Also, the Tribe is prohibited from using the income or principle of the Catawba Education or Social Services and Elderly Trust Funds as security or a source of payment for bonds issued by the Tribe.

Subsection (7) directs that the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 440 et seq.) applies to the Tribe except as such application is inconsistent with this Act or the Settlement Agreement.

SECTION II. TRIBAL TRUST FUNDS

Subsection (a) requires that funds paid under section 5, except for the payments made pursuant to Subsection 6(g), will be deposited with the Secretary in trust for the tribe with separate funds for economic development, land acquisition, education, social services and elderly assistance, and per capita payments. The tribe and the Secretary shall determine the share of settlement payments to be deposited in each fund.

Subsection (b)(1) authorizes the bribe to place any trust funds with a professional management firm, with the approval of the Secretary.

Subsection (b)(2) provides that the Tribe can hire a consulting or advisory firm to assist in the selection of an independent investment management firm.

Subsection (b)(3) provides the Secretary with 45 days to approve or reject the Tribe's selection of an independent investment management firm, or the section will be deemed approved by the Secretary.

Subsection (b)(4) instructs the Secretary to not unreasonably withhold the Tribe's selection and requires the Secretary to provide a detailed explanation of reasons for all disapprovals.

Subsection (b)(5) (A)–(D) outlines the procedures and requirements of the selected professional management firm, as follows: (A)(i) the development of current operating and long-term capital budgets (A)(ii) a plan for managing, investing and distributing income and principle; (B) investment of Trust Fund assets; (C) compliance with the distribution limitations of the Trust Fund; and (D) the approval by the Secretary of the investment management plan.

Subsection (b)(E) mandates that the Secretary manage, invest, and administer the Trust Fund until the Tribe's selection of an established investment management firm has been approved under this section.

Subsection (c) provides for transfer of funds from the Secretary to the approved management firm and relieves the Secretary of further liability. The tribe may request a return to management by the Secretary.

Subsection (d) establishes the fund for land acquisition.

Subsection (e) establishes the fund for economic development.

Subsection (f) establishes the fund for education.

Subsection (g) establishes the fund for social services and elderly assistance.

Subsection (h) establishes the per capita payment fund (15 percent of all funds paid into settlement fund—$7.5 million) and sets forth eligibility requirements for per capita payments.

Subsection (i) provides for the continued existence of all funds except the per capita fund.

Subsection (j) authorizes the circumstances under which money may be transferred among the trust funds.

Subsection (k) provides for the accounting of all trust funds on an annual basis.

Subsection (l) provides for replacement of the outside investment management firm or modification of the investment plan.

Subsection (m) states that none of the income or assets of the funds may be used to affect the eligibility of the tribe or its members for any federal, state or local government program.

SECTION 12. ESTABLISHMENT OF EXPANDED RESERVATION

Subsection (a) authorizes the state to convey the tribe's existing reservation to the Secretary in trust and the state's trustee obligations cease.

Subsection (b) authorizes the tribe and the Secretary to develop an expanded reservation as prescribed in the Settlement Agree-

ment. The Secretary must pay for all title work, soil studies and environmental audits. The total reservation is limited to 3,600 acres.

Subsection (c) defines the expansion zones and requires the Secretary and the tribe to endeavor to acquire lands in areas defined in the Settlement Agreement.

Subsection (d) sets forth procedures for acquiring noncontinguous tracts in accordance with section 14 of the Settlement Agreement. The Tribe must comply with the Section 14 of the Settlement Agreement prior to a request of the Secretary to place the tract in Reservation status.

Subsection (e) prohibits use of eminent domain powers in the acquisition of tribal reservation lands, but the sales will be deemed involuntary for purposes of section 1033 of the Internal Revenue Code.

Subsection (f) requires that properties be acquired in fee simple under the terms of the Settlement Agreement.

Subsection (g) authorizes permanent improvements on reservation lands held in trust.

Subsection (h) deals with existing easements acquired lands.

Subsection (i) tribal jurisdiction is governed by the Settlement Agreement and the State Act.

Subsection (j) provides for the lease sale or exchange of lands within the reservation, in accordance with the provisions of the Settlement Agreement.

Subsection (k) requires that land acquisitions for the expanded reservation must be made within 10 years of date of enactment, except that for up to 20 years after the date of the last payment into the land acquisition trust fund, the tribe may continue to add contiguous parcels.

Subsection (l) authorizes the tribe to lease lands up to 99 years.

Subsection (m) provides that the general land acquisition regulations of the BIA are not applicable to lands acquired under this section.

SECTION 13. NON-RESERVATION PROPERTIES

Subsection (a) allows the Tribe to acquire and hold parcels of real estate outside the Reservation purchased from the corpus of accumulated income of the Catawba Land Acquisition Trust Funds or the Catawba Economic Development Trust as stated in the Settlement Agreement. Jurisdiction is governed by Section 15 of the Settlement Agreement.

Subsection (b) subjects the Tribe to all Federal, State and local laws which govern land owners on non-Reservation lands. Therefore, notwithstanding any law, the Tribe is allowed to lease, sell, mortgage, restrict, encumber, or dispose of these lands.

Subsection (c) exempts the Tribe's non-Reservation lands from Federal land alienation law, Federal common law and section 2116 of the Revised Statutes (25 U.S.C. 177).

SECTION 14. GAMES OF CHANCE

Subsection (a) declares that the Indian Gaming Regulatory Act (25 U.S.C. 2701) does not apply to the Tribe.

Subsection (b) allows the Tribe to conduct games of chance as set forth in the Settlement Agreement and State implementing legislation of this Act. Otherwise, gambling and wagering are subject to State laws, rules and regulations both on and off the Reservation.

SECTION 15. GENERAL PROVISIONS

Subsection (a) terminate the whole Act if a court invalidates any of the provisions of section 4(a), 5 or 6. Should any other section be invalidated, the remainder of the Act remains in full force and effect.

Subsection (b) mandates that in the event of a conflict, the terms of this Act govern over the Settlement Agreement or State Act, and both documents are to be kept on file and available for public inspection at the Department of Interior. Whenever possible, the Act is to be construed in a manner consistent with the Settlement Agreement and State Act.

Subsection (c) provides that, if after enactment of this Act, a new Federal law materially affect or preempts the application of State laws, the Federal law shall not apply unless the State grants approval by law or joint resolution enacted by the General Assembly an signed by the Governor.

Subsection (d) states that the Tribe will be eligible to become a sponsor and operate an "enterprise zone" for "Foreign Trade zone".

Subsection (e) states that the provisions of section 4(a)(2), the provisions and section 19.1 of the Settlement Agreement are approved, ratified and confirmed by the United States, and shall be complied with in the same manner as if they had been enacted into federal law.

Subsection (f) allows the Tribe and State to amend the Settlement Agreement and/or State Act provided consent is given by both parties and the amendments relate to (1) the jurisdiction, enforcement, or application of the civil, criminal, regulatory, or tax laws of the Tribe and the State; (2) governmental responsibility of the State and Tribe over specified subject matters of geographical areas; (3) jurisdiction allocation of Tribal and State courts; and (4) technical and other corrections and revisions to conform the documents to the reached agreement between the parties.

SECTION 16. TAX TREATMENT OF INCOME AND TRANSACTIONS

Section 16 provides that notwithstanding any provisicn of the Act or the Agreement, any income of transaction otherwise taxable shall remain taxable under the Internal Revenue Code.

SECTION 17. EFFECTIVE DATE

Section 17 provides that the Act will take effect upon transfer of the Existing Reservation to the Secretary.

LEGISLATIVE HISTORY

H.R. 2399 was introduced on June 10, 1993, by Mr. Derrick of South Carolina. The bill was referred jointly to the Committees on Natural Resources and Ways and Means. A hearing was held on July 2 by the Subcommittee on Native American Affairs. The Subcommittee considered the bill on September 9 and an Amendment

in the Nature of a Substitute was reported to the Full Committee. The Full Committee considered the bill on September 22 and adopted the Amendment with minor revisions. H.R. 2399 was ordered to be reported to the House.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE ACT OF SEPTEMBER 21, 1959 (TERMINATION ACT)

[AN ACT To provide for the division of the tribal assets of the Catawba Indian Tribe of South Carolina among the members of the tribe and for other purposes.

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That when a majority of the adult members of the Catawba Indian Tribe of South Carolina, according to the most reliable information regarding membership that is available to the Secretary of the Interior, have indicated their agreement to a division of the tribal assets in accordance with the provisions of this Act, the Secretary shall publish in the Federal Register a notice of that fact. The membership roll of the Catawba Indian Tribe of South Carolina shall thereupon be closed as of midnight of the date of such notice, and no child born thereafter shall be eligible for enrollment. The Secretary of the Interior with advice and assistance of the tribe shall prepare a final roll of the members of the tribe who are living at such time, and when so doing shall provide a reasonable opportunity for any person to protest against the inclusion or omission of any name on or from the roll. The Secretary's decisions on all protests shall be final and conclusive. After all protests are disposed of, the final roll shall be published in the Federal Register.

[SEC. 2. Each member whose name appears on the final roll of the tribe as published in the Federal Register shall be entitled to receive an approximately equal share of the tribe's assets that are held in trust by the United States in accordance with the provisions of this Act. This right shall constitute personal property which may be inherited or bequeathed, but it shall not otherwise be subject to alienation or encumbrance.

[SEC. 3. The tribe's assets shall be distributed in accordance with the following provisions:

[(a) If the State of South Carolina by legislation authorizes assets that are held by the State in trust for the tribe to be included in the distribution plan prepared by the Secretary in accordance with the provisions of this Act, they may be included.

[(b) The tribal council shall designate any part of the tribe's land that is to be set aside for church, park, playground, or cemetery purposes and the Secretary is authorized to convey such tracts to trustees or agencies designated by the tribal council for that purpose and approved by the Secretary.

[(c) The remaining tribal assets shall be appraised by the Secretary and the share of each member shall be determined by divid-

ing the total number of enrolled members into the total appraisal. The tribal assets so appraised shall not include any improvements that were placed on the part of an assignment that is selected by an assignee, or his wife or children, pursuant to subsection (d) of this section. Such improvements shall be property of the assignee.

[(d) Subject to the provisions of this subsection, each member who is an adult under the laws of the State and who has an assignment shall be given the option of selecting and receiving title to any part of his assignment that has an appraised value not in excess of his share of the tribe's assets. A wife, husband, or child of such adult member may select and receive title to any part of such assignment that has an appraised value not in excess of her or his share of the tribe's assets; and, if the child is a minor under the laws of the State, the option of his behalf may be exercised by such adult member. Each selection shall be subject to the approval of the Secretary of the Interior, who shall consider the effect of the selection on the total value of the property. The title to any part of an assignment so selected may be taken in the name of the person entitled thereto, or the title to all of the parts of an assignment so selected may be taken in the names of the persons entitled thereto as tenants in common.

[(e) Each member who has no assignment may select and receive title to any part of the tribal land that is not selected pursuant to subsection (d) of this section and that has an appraised value not in excess of his share of the tribe's assets.

[(f) All assets of the tribe that are not selected and conveyed to members pursuant to subsections (d) and (e) of this section shall be sold and the proceeds distributed to the members in accordance with their respective interests. Such sales shall be by competitive bid and any member shall have the right to purchase property offered for sale for a price not less than the highest acceptable bid therefor. If more than one member exercises such right, the property shall be sold to the member exercising the right who offers the highest price. Any tribal assets that are not sold by the Secretary within two years from the date of the notice provided for in section 1 of this Act shall be conveyed to a trustee selected by the Secretary for disposition in accordance with this subsection, and the fees and expenses of such trustee shall be paid out of funds appropriated for the purposes of this Act.

[SEC. 4. The Secretary of the Interior is authorized to make such land surveys and to execute such conveyancing instruments as he deems necessary to convey marketable and recordable titles to the tribal assets disposed of pursuant to this Act. Each grantee shall receive an unrestricted title to the property conveyed.

[SEC. 5. The constitution of the tribe adopted pursuant to the Act of June 18, 1934 (48 Stat. 984), as amended, shall be revoked by the Secretary. Thereafter, the tribe and its members shall not be entitled to any of the special services performed by the United States for Indians because of their status as Indians, all statutes of the United States that affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner they apply to other persons or citizens within their jurisdiction. Nothing in this Act,

however, shall affect the status of such persons as citizens of the United States.

[SEC. 6. Nothing in this Act shall affect the rights, privileges, or obligations of the tribe and its members under the laws of South Carolina.

[SEC. 7. No property distributed under the provisions of this Act shall at the time of distribution be subject to any Federal or State income tax. Following any distribution of property made under the provisions of this Act, such property and income derived therefrom by the distributee shall be subject to the same taxes, State and Federal, as in the case of non-Indians: *Provided,* That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the grantee.

[SEC. 8. Prior to the revocation of the tribal constitution provided for in this Act, the Secretary is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or persons. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.]

OVERSIGHT STATEMENT

The Committee on Natural Resources will have continuing responsibility for oversight of the implementation of H.R. 2399 after enactment. No reports or recommendations were received pursuant to rule X, clause 2 of the Rules of the House of Representatives.

INFLATIONARY IMPACT, COST AND BUDGET ACT COMPLIANCE

In the opinion of the Committee, enactment of H.R. 2399 will have no inflationary impact on the national economy and will not result in significant costs. The estimate of the Congressional Budget Committee is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC., September 24, 1993.

Hon. GEORGE MILLER,
Chairman, Committee on Natural Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2399, the Catawba Indian Tribe of South Carolina Claims Settlement Act of 1993.

Enactment of H.R. 2399 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
(For Robert D. Reischauer, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2399.
2. Bill title: Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993.
3. Bill status: As ordered reported by the House Committee on Natural Resources on September 22, 1993.
4. Bill purpose: H.R. 2399 would approve the settlement agreement entered into by non-Indian parties and the Catawba Tribe of South Carolina and would direct the Secretary of the Interior to implement the settlement. The bill would authorize appropriations of $32 million over a four-year period for payment to tribal trust funds and for payment of legal fees.

H.R. 2399 also would restore the trust relationship between the United States and the tribe, thereby making the members of the tribe eligible for federal benefits. It would remove the cloud on titles in the State of South Carolina resulting from the tribe's land claim, and authorize the tribe to place trust funds under the management of an outside financial management firm. In addition, the bill would authorize the Secretary of the Interior to receive rights, title, and interest of the State to the existing State reservation of the Catawba Tribe. It also would require the Secretary to engage a land planning professional for the tribe and bear the costs of any title examinations, environmental audits, and soil investigations for any parcels of land that the tribe or secretary may purchase to expand the reservation.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998
Authorizations:					
Estimated authorization of appropriations	2	17	17	18	18
Estimated outlays	1	15	17	18	18

The above table shows the estimated costs to the Federal Government of carrying out the settlement agreement, as approved by this bill. It is possible that this agreement would allow the United States to avoid potential future costs resulting from court proceedings brought against the United States by the Catawba Tribe. Enactment of the agreement would settle all claims and suits pending against the United States in federal district court related to the matters in the bill. Therefore, some of the above costs could be offset by savings that would result from dismissal of these claims and suits. However, CBO cannot predict the outcome of any current or future court proceedings.

The costs of this bill fall within budget function 450.

Basis of Estimate: Section 4 would restore the federal trust relationship with the Catawba Tribe and would make members eligible

for benefits and services available to federally recognized tribes. Thus, while no additional expenditures are mandated or specifically authorized by the bill, relevant federal agencies would be required to include members of the tribe among those eligible for benefits and may seek additional funds in order to provide such benefits. CBO estimates that about 1,400 members of the Catawba Tribe would be eligible for benefits in fiscal year 1994, and that about 3,000 would be eligible in fiscal year 1995, after the additional enrollment period established in the bill is completed.

CBO assumes that H.R. 2399 would be enacted in fiscal year 1993 and that members of the Catawba Tribe would become eligible for federal benefits on the effective date of the legislation. We estimate that the current average annual cost of services and benefits provided nationally is about $3,000 per eligible tribe member and that the average will rise to about $3,500 over the 1994–1998 period. We expect that the current members of the Catawba Tribe would receive benefits for part of fiscal year 1994, and that all would receive benefits after 1994. As a result, CBO estimates that the federal government would incur costs of about $2 million in fiscal year 1994 and about $9 million annually thereafter, assuming appropriation of the necessary funds. (The Senate bill making appropriations for the Department of the Interior, as passed by the Senate, contains an appropriation of $1.4 million for the Catawba Tribe, contingent upon their gaining federal recognition.)

Section 5 would authorize the appropriation of $32 million in settlement funds to be deposited into the Catawba trust funds in four installments. Section 6 would require the Secretary to pay up to $5 million in legal fees for the tribe from these funds. CBO does not expect any settlement funds to be appropriated until fiscal year 1995, since the trust provisions of the act do not become effective until the state has transferred the original state reservation to the Interior Department. CBO expects that the transfer would occur early in fiscal year 1994, and that funds would be appropriated for the settlement in fiscal years 1995–1998 in four annual payments of $8 million each. Based on information from representatives of the Catawba Tribe, we expect the tribe to withdraw amounts in the trust funds and place them under professional financial management. Also, based on the settlement agreement and on information from the Tribe and the Department of the Interior, we assume that the legal fees would be paid from the $32 million settlement. Accordingly, we estimate that the funds would be disbursed shortly after they are appropriated.

Section 12 of the bill would require the Secretary to hire a professional land management planning firm for the tribe and to conduct a number of assessments and tests for any lands that the tribe may be interested in purchasing. Based on information from the Bureau of Land Management regarding similar activities on other federal lands, we estimate that these activities would cost about $100,000 over the 1994–1998 period. This figure could vary depending on the amount of land the tribe may purchase and the condition of the land.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or re-

ceipts through 1998. CBO estimates that enactment of H.R. 2399 would affect direct spending because section 5 would require the Secretary of the Interior to collect, on behalf of the tribe, the non-federal contributions to the settlement. We expect that the tribe would place the funds under private management, and therefore that these funds would be collected and disbursed within the same fiscal year. As a result, this provision would have no net budgetary impact. The following table summarizes the pay-as-you-go impact of this bill.

	1994	1995	1996	1997	1998
Change in outlays	0	0	0	0	0 (1)
Change in receipts	0	0	0	0	0

[1] Not applicable.

7. Estimated cost to State and local governments: Under the settlement agreement, the state of South Carolina would agree to make payments to the Catawba Tribe. In exchange, all claims against the state by the Catawba Tribe related to the matters in H.R. 2399 would be dropped. In addition, the settlement agreement would exempt the tribe from certain state taxes and make it responsible for paying state taxes on certain new games-of-chance activities. CBO does not have sufficient information to estimate the magnitude of these changes.

8. Estimate comparison: None.

9. Previous CBO estimate: On August 5, 1993, CBO prepared an estimate for S. 1156, the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, as reported by the Senate Committee on Indian Affairs on August 5, 1993. H.R. 2399 is similar to the Senate bill, but it does not contain several provisions that would affect the U.S. tax code. Accordingly, CBO's estimate of the cost of H.R. 2399 does not include the costs associated with those sections of S. 1156.

10. Estimate prepared by: Patricia A. Conroy.

11. Estimate approved by: Paul Van de Water, for C.G. Nuckols, Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF CRAIG THOMAS

H.R. 2399 settles what could have proved to be costly and protracted lawsuit between the *Ye Iswa*—the People of the River—and some 60,000 landholders in the State of South Carolina. Over the past twenty or so years, the number of these settlements has grown.[1] It is my view that such settlements are eminently more productive and beneficial to all parties than resorting to lengthy and often acrimonious court battles. However, while I support the objectives of H.R. 2399, I write briefly to outline certain concerns I harbor about this legislation.

Principal among these is the amount of the federal contribution to the monetary portion of the settlement agreement. Under the terms of that agreement, the United States is charged with paying almost two-thirds of the settlement fund—$32 million.[2] This amount was apportioned in negotiations between South Carolina and the Catawba. It is my understanding that no federal representative was present during that process in other than an observer capacity, and then only sporadically. It seems to me quite irregular for two third-parties to saddle the United States—which is not even a party to the Nation's lawsuit—with a multimillion dollar obligation without the direct participation of the federal government.

Moreover, I am troubled with the amount of the federal contribution *vis-á-vis* that of the State of South Carolina. Under the terms of the settlement agreement, the United States is required to contribute $32 million to the settlement fund, while the State of South Carolina and other local entities are required to contribute $18 million. Since this money is, in effect, restitution for the taking of the Catawba lands over the years it seems to me to be logical to apportion the percentage of the contribution based on the amount of culpability for that taking. Reference to the historical underpinnings of this case lead me to conclude that the more peccant parties are the State and its citizens, and thus it is the State that should bear the lion's share of the payment.

The Federal Government was certainly not blameless. After the signing of the Treaty of Paris[3] which ended the Revolutionary War, the United States assumed the obligations of the British Crown under treaties previously signed by that government and the tribes.[4] This included the Treaty of Pine Tree Hill of 1760 and the

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[1] *See. e.g.*, Seneca Nation (New York) Land Claims Settlement Act, Pub. L. No. 101–503, 104 Stat. 1292 (1990); Puyallup Tribe of Indians Settlement Act, Pub. L. No. 101–41, 103 Stat. 83 (1989); Massachusetts Indian Land Claims Settlement Act, Pub. L. No. 100–95, 101 Stat. 704 (1987); Connecticut Indian Land Claims Settlement Act, Pub. L. No. 98–134, 97 Stat. 851 (1983); Florida Indian Land Claims Settlement Act, Pub. L. No. 97–399, 96 Stat. 2012 (1982); Maine Indian Claims Settlement Act, Pub. L. No. 96–420, 94 Stat. 1785 (1980); Rhode Island Indian Claims Settlement Act, Pub. L. No. 95–395, 92 Stat. 813 (1978).

[2] *See* H.R. 2399, §5, 103d Cong., 1st Sess. (1993).

[3] Treaty of Peace, Sept. 3, 1783, United States-United Kingdom, 8 Stat. 80. T.S. No. 104.

[4] *See Strother* v. *Lucas*, 37 (9 Pet.) 711, 734 (1835).

Treaty of Augusta of 1763, in which 144,000 acres were set aside in perpetuity for the Catawba's exclusive occupation and use.[5] Yet despite treaty and concomitant trust obligations, the United States did nothing to prevent the alienation of the Catawba lands by the State of South Carolina between 1789 and 1840. Over the ensuing years, various agencies and officials of the federal government ignored repeated entreaties by the Catawba seeking protection of their rights and the return of their lands.[6]

While the culpability of the United States can thus be characterized as passive malfeasance, that of the State of South Carolina was clearly active. From the time of the signing of the Treaty of Augusta, the Colony of South Carolina and then the State allowed extensive non-Indian settlement and leasing of the Catawba lands. Then, in 1840, the Nation and the State signed the Treaty of Nation Ford pursuant to which the Catawba ceded title of all its lands to the State.[7] This cession was clearly in violation of the Trade and Intercourse Act of 1790,[8] which requires any transfer of Indian lands to states or private parties to be approved by the Congress. It is the violation of this statute upon which the Catawba base their legal suit.

This active versus passive dichotomy, much like the active/passive theory of tort law, seems to me to require a different calculation of the amounts that should be contributed by the state and the federal government, with the balance leaning considerably more in the latter's favor. Unfortunately, however, I do not have the luxury of pursuing that redistribution. It is clear to me that given the positions of the negotiating parties, and the close proximity in which the October deadline for resolution of this settlement looms, that we have little choice but to hold noses and approve the settlement as is. Any change in the funding formula would likely result in the unraveling of the settlement agreement and the requirement that negotiations begin anew. In the interim, the Nation would be required to serve its 62,000 summonses and we would be faced with that which all parties have sought most strenuously to avoid.

It is my hope that in any future settlement negotiations in which the parties contemplate a federal contribution such as in this case, officials from the Department of the Interior or related agencies will take a more active participatory role in the negotiation process in order to safeguard the interests of the United States. In fact, I foresee introducing legislation to require just that.

My second concern with this legislation is that under the agreement the Nation cedes a substantial portion of its sovereignty to the State. I will not dwell on the particulars of that cession, since these are more than adequately set forth in the majority report. Instead, I will simply point out that the cession worries me for two reasons. First, I believe it sets a bad precedent for future negotiations between tribes and state governments. Under the terms of the settlement, the Nation has given up many of the attributes which would otherwise define it as a sovereign dependent nation.

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[5] *See* H.R. Rep. No. 96–17, 96th Cong., 1st Sess. 156–68 (1979).

[6] *See* Letter from Rep. John M. Spratt to Leon Panetta, Director, Office of Management and Budget 1–6 (July 15, 1993) (listing examples).

[7] *See* H.R. Rep. No. 96–17, *supra* note 5, at 181–86.

[8] Act of July 22, 1790, ch. 33, 1 Stat. 137.

Second, I am troubled that the United States may have a trust duty to the Nation which might be breached should we countenance such a cession.

Some of these concerns were addressed in the amendment-in-the-nature-of-a-substitute which was accepted in full committee mark-up. Normally, I would heartily support such an amendment. However, it appears to me that in this case we walk a fine line between our role as trustee for the tribe and being over-paternalistic. After all, while we may not agree with the terms of the settlement, an overwhelming majority of the tribe, fully informed of the contents of the agreement and its consequences, supported that cession in a vote. Under those circumstances, and in an era when the relationship between the federal government and the tribes is based on a policy of self-determination, who are we to gainsay their decision?

In closing, I note that the good that will result from the passage of this legislation in my mind outweighs my apprehension in regards to these two issues. I urge my colleagues to support this legislation, and look forward to its swift passage by both Houses.

CRAIG THOMAS.

Filename: JLQIII 8-4-93

AGREEMENT IN PRINCIPLE

1. Parties. This Agreement in Principle is made by and between the following parties:

1.1 The Catawba Indian Tribe of South Carolina, represented by Gilbert Blue, Chief; E. Fred Sanders, Assistant Chief; Carson Blue, Secretary-Treasurer; and Tribal Executive Committee Members - Buck George, Claude Ayers, Foxx Ayers, Dewey Adams and Wilford Harris; and by Don B. Miller, Native American Rights Fund, and Robert M. Jones, Jay Bender, Richard Steele, Cheryl Perkins and Ross Swimmer, attorneys for the Catawbas.

1.2 The State of South Carolina, represented by Governor Carroll A. Campbell, Jr., and by A. Crawford Clarkson, Jr., Chairman of the Governor's Advisory Committee on the Catawba Indian Claim; by Senator Robert W. Hayes, Jr., representing the Legislative Delegations of York, Lancaster, and Chester Counties, South Carolina; by Representative John M. Spratt, Jr., representing the South Carolina Congressional Delegation.

2. Definitions. When used in this Agreement, the following words, terms or abbreviations shall have the meanings given below:

2.1 "Agreement" shall mean this written document, entitled "Agreement in Principle."

2.2 "Catawba Indian Tribe," "Catawbas," or "Tribe" shall mean the Catawba Indian Tribe of South Carolina as constituted in aboriginal times, which was party to the Treaty of Pine Tree Hill in 1760 as confirmed by the Treaty of Augusta in 1763, which was party also to the Treaty of Nation Ford in 1840, and which was the subject of the Catawba Indian Tribe of South Carolina Division of Assets Act, enacted September 29, 1959, codified at 25 U.S.C. §§ 931-938, and all predecessors and successors in interest, including the Catawba Indian Tribe of South Carolina, Inc.

2.3 "State Government" or "State" shall mean the State of South Carolina.

2.4 "Executive Committee" shall mean the body of the Catawba Indian Tribe of South Carolina composed of the Tribe's executive officers as selected by the Tribe in accordance with its constitution.

2.5 "General Council" shall mean the membership of the Tribe convened as the Tribe's governing body for the purpose of conducting tribal business pursuant to the Tribe's constitution.

2.6 "Member" or "tribal member" shall mean individuals who are currently members of the Tribe or who are enrolled in accordance with the Federal Implementing legislation.

2.7 "Secretary of the Interior" or "Secretary" shall mean the Secretary of the Department of the Interior or his designee, and "Department" or "Department of the Interior" shall refer to the United States Department of the Interior.

2.8 "Federal Government" shall mean the Government of the United States of America.

2.9 "Catawba Claim Area" shall mean that area of approximately 144,000 acres in York, Lancaster, and Chester Counties, South Carolina claimed by the Catawba Tribe under the Treaty of Pine Tree Hill in 1760 and the Treaty of Augusta in 1763, and surveyed by Samuel Wylie in 1764, and ceded by the Catawba Indian Tribe to the State of South Carolina by the Treaty of Nation Ford in 1840.

2.10 "Suit" or "Suits" shall mean Catawba Indian Tribe of South Carolina v. State of South Carolina, et al., docketed as Civil Action No. 80-2050 and filed in United States District Court for the District of South Carolina and Catawba Indian Tribe of South Carolina v. United States of America, docketed as Civil Action No. 90-553L and filed with the United States Court of Claims.

2.11 "Claim" or "Claims" shall mean any claim which was asserted by the plaintiffs in either Suit, and any other claim which could have been asserted by the Catawba Indian Tribe or any Catawba Indian of a right, title, or interest in property, to trespass or property damages, or of a hunting, fishing or other right to natural resources, if such claim is based upon aboriginal title, recognized title, or title by grant, patent, or treaty, including the Treaty of Pine Tree Hill of 1760, the Treaty of Augusta of 1763, or the Treaty of Nation Ford of 1840.

2.12 "Termination Act" shall mean the "Catawba Indian Tribe Division of Assets Act," enacted September 21, 1959, 73 Stat. 592, 25 U.S.C. §§ 931-938.

2.13 "Reservation" shall mean the tract of land now held in trust for the Tribe by the State of South Carolina, sometimes referred to herein as the "existing reservation," and lands added to the existing reservation in accordance with Section 14, sometimes referred to herein as the "expanded reservation," which are to be held in trust for the Tribe by the United States of America, acting through the Secretary of Interior, in accordance with this Agreement.

2.14 "Tribal Trust Funds" shall mean those funds set aside in trusts established for the benefit of the Tribe, as provided in Section 13.

2.15 "Implementing legislation" shall mean all appropriate federal, state and county laws and ordinances and tribal action necessary to enact and effect the terms, provisions, and conditions of settlement, as specified in § 3.1 of this Agreement.

2.16 "Transfer" includes, but is not limited to, any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources.

2.17 "Internal Matters" or "Internal Tribal Matters" are matters which include, but are not limited to the following examples: the relationship between the Tribe and one or more of its

members, the conduct of Tribal government over members of the Tribe, or the Tribe's exercise of the power to exclude individuals from its Reservation.

3. Purpose; Duration of Certain Provisions Relating to Hunting and Fishing Licenses and Tax Treatment.

3.1 Purpose. The purpose of this Agreement is to record the understanding of the parties with respect to settlement of the claims and suits pending in the United States District Court for the District of South Carolina entitled Catawba Indian Tribe of South Carolina Inc. v. State of South Carolina, et al., docketed as Civil Action No. 80-2050, and in the United States Claims Court entitled The Catawba Indian Tribe of South Carolina v. United States of America, docketed as Civil No. 90-553L, and any other suit or claim, which is filed now or which may be filed in the future, all, as further defined in §§ 2.10 and 2.11. By signing this document, each party signifies its good faith commitment to fulfill the terms of settlement set forth in this Agreement. All parties recognize, however, that this Agreement is an agreement in principle; that to complete this Agreement, terms of settlement and implementing legislation in more explicit detail will have to be defined and drafted; and that to consummate this Agreement, formal ratification will be required by the Catawba Indian Tribe and legislation will be required to be enacted by the governing bodies of York and Lancaster Counties, by the General Assembly of South Carolina, and by the Congress of the United States. The parties agree that they will use their best efforts to ensure passage of federal, state and local legislation and tribal action implementing the provisions of this Agreement without any material change and will attempt throughout the legislative process to fulfill the intent of this Agreement. Legislation adopted by the State shall not become effective until federal legislation is enacted and reviewed by the Governor to ensure it is consistent with the provisions of this Agreement.

3.2 Licenses and Tax Treatment. The Tribe and its members shall be eligible to receive the hunting and fishing licenses described in § 17.5 and the tax treatment described in §§ 18.4.2, 18.6.1, 18.9.1, and 18.9.3 of this Agreement for a period of 99 years from the effective date of the State implementing legislation required to effectuate the settlement described herein.

4. Restoration of the Federal Trust Relationship.

4.1 Establishment of Trust Relationship. Upon final enactment of all local, state and federal legislation implementing this settlement, the trust relationship between the Tribe and the United States shall be restored. On the same date as the Tribe is restored, the Tribe and the members of the Tribe shall be eligible for all benefits and services furnished to federally recognized Indian Tribes and their members. The federal legislation implementing this settlement will, prospectively, repeal the Termination Act. Such repeal shall not divest or disturb title to any land conveyed to any person or firm as a result of the Termination

Act and the partition and liquidation of Tribal land. The jurisdiction and governmental powers of the Tribe shall be exclusively those that are specifically enumerated in this Agreement. Except for claims extinguished under this Agreement, the enactment of the implementing legislation shall not affect any property right or obligation or any contractual right or obligation in existence before its effective date or any obligation for taxes levied before such date.

4.2 Entitlement of Tribe and Members. The Catawba Indian Tribe of South Carolina will be entered on the list of federally recognized bands and tribes maintained by the Department of the Interior; and its members will be entitled to special services, educational benefits, medical care, and welfare assistance provided by the United States to Indians because of their status as Indians, and the Tribe will be entitled to the special services performed by the United States for tribes because of their status as Indian tribes.

4.3 Extent of Jurisdiction. Federal recognition shall not be construed to empower the Catawbas with special jurisdiction, or to derogate from the jurisdiction of the State of South Carolina or its political subdivisions other than municipalities over the Catawba Indian Tribe and its members, except as expressly provided in this Agreement. The Catawba Tribe, its members, and the lands and natural resources owned by the Tribe and its members (including land and natural resources held by the United States in trust for the Tribe) shall be subject to the civil, criminal, and regulatory jurisdiction of the State, its agencies and political subdivisions other than municipalities, and the civil and criminal jurisdiction of the courts of the State to the same extent as any other person, citizen, or land in the State, except as otherwise expressly provided in this Agreement.

5. Monetary Contributions Toward Settlement.

5.1 Federal Contribution. Upon formal ratification of this Agreement by the Tribe and final enactment of all local, state and federal legislation consummating this settlement, the Federal Government shall contribute Thirty-two million and no/100 ($32,000,000) Dollars to the trust funds established in accordance with the provisions of Section 13 less any funds to be paid pursuant to § 6.4 of this Agreement, in equal annual installments commencing in Fiscal Year 1995 and ending in Fiscal Year 1998, and shall begin providing the services and benefits accorded recognized tribes and their members, as provided in this Agreement.

5.2 State, Local, and Private Contributions. Upon formal ratification of this Agreement by the Tribe and final enactment of all local, state, and federal legislation consummating this settlement, the State, local governments and private sources shall contribute, in five equal annual installments, Eighteen million and no/100 ($18,000,000) Dollars, to the Department of the Interior, and the Secretary shall deposit such contributions, less any funds to be paid pursuant to § 6.4 of this Agreement, in the

trust funds established pursuant to Section 13. Any private payments made under this Agreement shall be treated as either a payment in settlement of litigation or a charitable contribution for federal and state income tax purposes.

6. Extinguishment of Claims, Dismissal of Suits, Ratification of Prior Transfers.

6.1 In consideration of the payments set forth in Section 5 and other benefits accruing to the Tribe and its members under this Agreement, the federal legislation implementing this settlement shall extinguish all claims and all right, title, and interest that the Tribe, its members, or any one or more of its members, or any person or group of persons purporting to be Catawba Indians, may have to aboriginal title, recognized title, or title by grant, patent, or treaty, to the lands located anywhere in the United States; except, however, that this quitclaim and release shall not apply to the 630-acre Reservation, now held in trust by the State of South Carolina; nor shall it divest or disturb any member of the Tribe of any fee simple, leasehold, or remainder estate, or any equitable or beneficial interest, he or she may own and hold individually, and not as members of the Tribe, in any parcels of land anywhere in the United States.

6.2 In further consideration of the payments set forth in Section 5 and other benefits accruing to the Tribe and its members under this Agreement, the federal legislation implementing this settlement shall also extinguish any hunting, fishing, or water rights or rights to any other natural resources claimed by the Tribe based on aboriginal or treaty recognized title, and all trespass damages and other damages associated with use, occupancy or possession, or entry upon such lands, including without limitation all profits and rents derived from such lands, and any timber, soil, minerals, crops, or other natural resources taken from such lands; provided, however, that extinguishment of the claim shall in no way diminish or derogate from the fee simple estate in the existing reservation now held by the State as trustee for the benefit of the Catawbas.

6.3 The Tribe shall accept the payments set forth in Section 5 and the benefits provided under this Agreement as just and full compensation for, and the Federal Implementing legislation shall ratify and approve, all prior transfers of lands by the Tribe, its members or any one or more of its members within the United States, including the cession of title purportedly effected by the Treaty of Nation Ford in 1840, and to the extent that such cession may have included aboriginal title, such legislation shall extinguish aboriginal title as of the effective date of transfer; provided, however that nothing in this section shall be construed to affect, diminish, or eliminate the personal claim of any individual Indian which is pursued under any law of general applicability that protects non-Indians as well as Indians. By virtue of such approval and ratification, together with the extinguishment of aboriginal title, all claims based on aboriginal, recognized title, or title by grant, patent or treaty against the

United States, or against any state or subdivision of any state, or any person or entity, by the Catawba Indian Tribe, or by any member or members of the Tribe, or by any person or group of persons purporting to be Catawba Indians, including but not limited to possessory claims and claims for ejectment, claims for trespass damages, and claims for use, occupancy, hunting, fishing, or extraction and removal of natural resources, and any accounting therefor, arising from the beginning of time to the date of such legislation shall be canceled, released, and forever extinguished. Adoption of the federal and state legislation implementing this Agreement shall constitute a general discharge of all obligations of the United States, the State and all of their political subdivisions, agencies and departments, including claims asserted in the Suits defined in § 2.10 arising out of any treaty or agreement, including the Treaty of Nation Ford, the Treaty of Augusta and the Treaty of Pine Tree Hill, with the Tribe, its members or any one or more of its members.

6.4 Upon final enactment of all implementing legislation, the Tribe shall duly consent to the dismissal with prejudice of the suits, and shall execute and deliver to the State and the United States full and final releases of all their claims against the State and the United States and all other defendants and landowners in the Claim Area, including defendants not yet named or sued. The parties to the suits shall bear their own costs and attorney fees. The Federal Implementing legislation shall authorize and direct the Secretary of the Interior to pay to the Tribes' attorneys attorney fees and expenses not to exceed ten and no/100 (10%) percent of the funds paid pursuant to Section 5 of this Agreement upon receipt by the Secretary of a written request from the Tribe containing:

6.4.1 A certification by the Tribe that the Tribe consents to and authorizes the payment by the Secretary of its attorneys' fees incurred in the Suits and the settlement of the Tribe's claims from the $50,000,000 obligated for payment to the Tribe by Federal, State, local, and private parties pursuant to Section 5 of the Settlement Agreement;

6.4.2 A certification by the Tribe that the Tribe has received and reviewed the attorneys' documentation of their fees and finds the fees reasonable; and

6.4.3 A schedule of payments of the attorneys' fees, approved by the Tribe, that provides for disbursements to the attorneys by the Secretary in four equal annual installments beginning in the first fiscal year that Federal funds are appropriated for payment to the Tribe pursuant to Section 5 of the Federal Implementing legislation.

The Secretary shall disburse the four annual payments to the attorneys required by this section within 30 days of the Federal appropriation to the Tribe in each fiscal year and prior to depositing the Federal funds in trust for the Tribe pursuant to Section 11 of the Federal Implementing legislation.

6.5 The federal legislation implementing this settlement shall bar the United States from asserting by or on behalf of

the Tribe, any one or more of its members, or anyone purporting to be a Tribal member, any claim arising before the date of such legislation from the transfer of any land or natural resources of the Tribe by deed or other grant, or by treaty, compact, or act of law, on the grounds that such transfer was not made in accordance with the laws of the State or the United States. The federal legislation implementing this settlement shall also provide that any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Tribe, or any of its members, or anyone purporting to be a Tribal member, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (Chapter 33, Section 4, 1 Statutes 137, 138), and all amendments thereto and subsequent reenactments and versions thereof; and Congress will ratify and approve any such transfer as of its effective date; provided, however, that nothing in this section shall be construed to affect, diminish, or eliminate the personal claim of any individual Indian (except for any federal common law fraud claim or other action to recover for a Claim as defined in § 2.11 which is pursued under any law of general applicability that protects non-Indians as well as Indians.

6.6 The provisions of this section shall take effect immediately upon adoption of federal and state legislation implementing the provisions of this settlement. The Tribe shall have a cause of action in the United States District Court for the District of South Carolina as provided in S.C. Code Ann. § 27-16-50(E) to recover any part of the State's obligation still remaining unpaid.

7. Base Membership Roll.

7.1 Base Membership Roll Criteria. Within one year after enactment of this section, the Tribe shall submit to the Secretary for approval, its base membership roll. An individual is eligible for inclusion on the base membership roll if that individual is living on the date of enactment of this Act and --

7.1.1 is listed on the membership roll published by the Secretary in the Federal Register on February 25, 1961 (26 Federal Register 1680-1688), "Notice of Final Membership Roll" and is not excluded under the provisions of § 7.3; or

7.1.2 the Executive Committee determines, based on the criteria used to compile the roll referred to in § 7.1.1, that the individual should have been included on the membership roll at that time, but was not; or

7.1.3. is a lineal descendant of a Member whose name appeared or should have appeared on the membership roll referred to in § 7.1.1.

7.2 Base Membership Roll Notice. Within 90 days after the enactment of the Federal Implementing legislation, the Secretary shall publish in the Federal Register, and in three newspapers of general circulation in the Tribe's service area, a notice stating:

7.2.1 that a base membership roll is being prepared by the Tribe and that the current membership roll is open and will remain open for a period of 90 days;

7.2.2 the requirements for inclusion on the base membership roll;

7.2.3 the Final Membership Roll published by the Secretary in the Federal Register on February 25, 1961.

7.2.4 the current membership roll as prepared by the Executive Committee and approved by the General Council; and

7.2.5 the name and address of the tribal or Federal official to whom inquiries should be made.

7.3 Completion of Base Membership Roll. Within 120 days after publication of notice under § 7.2, the Secretary, after consultation with the Tribe, shall prepare and publish in the Federal Register and in three newspapers of general circulation in the Tribes's service area a proposed final base membership roll of the Tribe. Within 60 days from the date of publication of the proposed final base membership roll, an appeal may be filed with the Executive Committee under rules made by the Executive Committee in consultation with the Secretary. Such an appeal may be filed by a Member with respect to the inclusion of any name on the proposed final base membership roll and by any person with respect to the exclusion of his or her name from the final base membership roll. The Executive Committee shall review such appeals and render a decision, subject to the Secretary's approval. If the Executive Committee and the Secretary disagree, the Secretary's decision will be final. All such appeals shall be resolved within 90 days following publication of the proposed roll. The final base membership roll of the Tribe shall then be published in the Federal Register, and in three newspapers of general circulation in the Tribe's service area, and shall be final for purposes of the distribution of funds from the Per Capita Trust Fund.

7.4 Future Membership in the Tribe. The Tribe shall have the right to determine future membership in the Tribe; however, in no event may an individual be enrolled as a tribal member unless the individual is a lineal descendent of a person on the base membership roll and has continued to maintain political relations with the Tribe.

8. Transitional and Provisional Government.

8.1 Future Tribal Government. The Tribe shall adopt a new constitution within 24 months after the effective date of the Federal Implementing legislation.

8.2 Executive Committee as Transitional Body.

8.2.1 Until the Tribe has adopted a constitution, the existing tribal constitution shall remain in effect and the Executive Committee is recognized as the provisional and transitional governing body of the Tribe. Until an election of tribal officers under the new constitution, the Executive Committee shall--

8.2.1.1 represent the Tribe and its Members in the implementation of this Act; and

8.2.1.2 during such period--

8.2.1.2.1 have full authority to enter into contracts, grant agreements and other arrangements with any Federal department or agency; and

8.2.1.2.2 have full authority to administer or operate any program under such contracts or agreements.

8.2.2 Until the initial election of tribal officers under a new constitution and bylaws, the Executive Committee shall--

8.2.2.1 determine tribal membership in accordance with the provisions of Section 7; and

8.2.2.2 oversee and implement the revision and proposal to the Tribe of a new constitution and conduct such tribal meetings and elections as are required by the Federal Implementing legislation.

9. Tribal Constitution and Governance.

9.1 Indian Reorganization Act. If the Tribe so elects, it may organize under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act"). The Tribe shall be subject to such Act except to the extent such sections are inconsistent with the Federal Implementing legislation.

9.2 Adoption of New Tribal Constitution. Within 180 days after the effective date of the Federal Implemanting legislation, the Executive Committee shall draft and distribute to each Member eligible to vote under the tribal constitution in effect on the effective date of the Federal Implementing legislation, a proposed constitution and bylaws for the Tribe together with a brief, impartial description of the proposed constitution and bylaws and a notice of the date, time and location of the election under this section. Not sooner than 30 days or later than 90 days after the distribution of the proposed constitution, the Executive Committee shall conduct a secret-ballot election to adopt a new constitution and bylaws.

9.3 Majority Vote for Adoption; Procedure in Event of Failure to Adopt Proposed Constitution.

9.3.1 The tribal constitution and bylaws shall be ratified and adopted if--

9.3.1.1 not less than 30 percent of those entitled to vote do vote; and

9.3.1.2 approved by a majority of those actually voting.

9.3.2 If in any such election such majority does not approve the adoption of the proposed constitution and bylaws, the Executive Committee shall prepare another proposed constitution and bylaws and present it to the Tribe in the same manner provided in this section for the first constitution and bylaws. Such new proposed constitution and bylaws shall be distributed to the eligible voters of the Tribe no later than 180 days after the date of the election in which the first proposed constitution and bylaws failed of adoption. An election on the question of the

adoption of the new proposal of the Executive Committee shall be conducted in the same manner provided in § 9.2 for the adoption of the first proposed constitution and bylaws.

9.4. Election of Tribal Officers. Within 120 days after the Tribe ratifies and adopts a constitution and bylaws, the Executive committee shall conduct an election by secret ballot for the purpose of electing tribal officials as provided in the constitution and bylaws. Subsequent elections shall be held in accordance with the Tribe's constitution and bylaws.

9.5. Extension of Time. Any time periods prescribed in §§ 9.2 and 9.5 may be altered by written agreement between the Executive Committee and the Secretary.

10. Jurisdiction and Governance of the Reservation.

10.1 Governance. Except as otherwise provided in this Agreement, the Tribe shall exercise full authority over internal tribal matters.

10.2 Powers of Tribe. Regardless of whether the Tribe elects to organize under the Indian Reorganization Act, in any constitution adopted by the Tribe, the Tribe may be authorized to the extent which is consistent with this Agreement (i) to regulate the use and disposition of tribal property; (ii) to define laws, petty crimes and rules of conduct applicable to members of the Tribe while on the Reservation, supplementing but not supplanting criminal laws of the State of South Carolina; (iii) to regulate the conduct of businesses located on the Reservation and individuals residing on the Reservation; (iv) to levy taxes on members of the Tribe and levy other taxes as provided in S.C. Code Ann. § 27-16-130; and (v) to grant exemptions, abatements or waivers from any tribal laws, tribal regulations, or tribal taxes, except the Tribal Sales and Use Taxes, otherwise applicable on the Reservation, including waivers of the jurisdiction of any tribal court; (vi) to adopt its own form of government; (vii) to determine membership as provided in Section 7 of this Agreement and the Federal Implementing legislation; (viii) to exclude non-members from its membership rolls and from the Reservation, except for (a) any public roads traversing the Reservation; (b) passage on and use of the Catawba River; (c) public or private easements encumbering the Reservation properly used by those with authority to use such easements; (d) federal, state, and local governmental officials and employees duly performing official governmental functions on the Reservation; and (e) any other access to the Reservation allowed by federal law; and (ix) to charter tribally-owned economic development corporations and enterprises provided, the corporations or enterprises register with the Secretary of State for South Carolina as a domestic or foreign corporation when doing business off the Reservation.

10.3 Indian Civil Rights Act. The Tribe shall be subject to the Indian Civil Rights Act, 25 U.S.C. §§ 1301- 1303, 1311, 1312, 1321-1326, 1331, 1341, and any amendments thereto, which shall apply to the Reservation and any tribal court and to anyone subject to its jurisdiction.

11. Criminal Jurisdiction.

11.1 Except as provided in this section, South Carolina shall exercise exclusive jurisdiction over all crimes under the statutory or common law of the State.

11.2 A constitution adopted by the Tribe may provide for a tribal court with criminal jurisdiction.

11.2.1 If a tribal court with criminal jurisdiction is created, the territorial jurisdiction of the court both original and appellate must be limited to the Reservation; the jurisdiction of the court over persons must be limited to members of the Tribe; and the subject matter jurisdiction of the court is limited to crimes within the jurisdiction of the State Magistrates' Courts and to any additional misdemeanors and petty offenses specified in the ordinances or laws adopted by the Tribe. The fines and penalties for the offenses may not exceed the maximum fines and penalties that a state magistrate's court may impose.

11.2.2 In all cases in which the tribal court has jurisdiction over state law, its jurisdiction must be concurrent with the jurisdiction of the Magistrates' Courts of the State; and defendants shall have the right to remove their cases to the Magistrate's Court or appeal their convictions in Tribal Court cases to the General Sessions Court, in the same manner that Magistrate's Court decisions may be appealed, or in accordance with procedures the General Assembly may provide. In cases where the tribal court is applying those additional ordinances or laws described in § 11.2.1, it shall have exclusive jurisdiction.

11.3 For the purpose of enforcing the Tribe's powers provided by this Section and the Federal Implementing legislation, the Tribe may employ peace officers.

11.3.1 If the Tribe elects to employ peace officers, all tribal peace officers shall undergo and pass the same course of training required of sheriff's deputies by South Carolina.

11.3.2 The State, the Counties of York and Lancaster, and the Tribe shall enter into a cross-deputization agreement whereby tribal law enforcement officers are authorized to enforce state, county, and tribal law within the Reservation against members and nonmembers of the Tribe, and state and county law enforcement officers are authorized to enforce state, county, and tribal law within the Reservation against members and nonmembers of the Tribe. However, if the Reservation is located in only one of the two counties, only the sheriff of that county shall enter into a cross deputization agreement as provided in this section.

12. Civil Jurisdiction: Jurisdiction of Tribal Court.

12.1 The Tribe may provide in its constitution for a Tribal Court having civil jurisdiction which may extend up to, but not exceed, the extent provided in this section and the Federal

implementing legislation. The Tribe may have a court of original jurisdiction, as well as an appellate court.

12.1.1 With respect to actions on contracts, the Tribal Court may be vested with jurisdiction over an action on a contract:

12.1.1.1 to which the Tribe or a member of the Tribe is a party, which expressly provides in writing that the Tribal Court has concurrent or exclusive jurisdiction.

12.1.1.2 between the Tribe or a member of the Tribe and other parties or their agents who are physically present on the Reservation when the contract is made, and which is to be performed in part on the Reservation so long as the contract does not expressly exclude jurisdiction of the Tribal Court. For purposes of this section, the delivery of goods or the solicitation of business on the Reservation does not constitute part performance sufficient to confer jurisdiction.

12.1.1.3 to which the Tribe or a member of the Tribe is a party where more than fifty percent of the services to be rendered are performed on the Reservation, so long as the contract does not expressly exclude jurisdiction of the Tribal Court.

12.1.2 With respect to actions in tort, the Tribal Court may be vested with jurisdiction over an action arising out of:

12.1.2.1 an intentional tort, as defined by South Carolina law, committed on the Reservation, in which recovery is sought for bodily injuries or damages to tangible property located on the Reservation.

12.1.2.2 negligent tortious conduct occurring on the Reservation or conduct occurring on the Reservation for which strict liability may be imposed, excluding, however, accidents occurring within the right-of-way limits of a highway, road, or other public easement owned or maintained by the State or its subdivisions or by the United States, which abuts or crosses the Reservation. However, an action in tort involving a nonmember of the Tribe as defendant may be removed to a state or federal court of appropriate jurisdiction if the amount in controversy exceeds the jurisdictional limits then applicable to magistrate's court in South Carolina.

12.1.3 The Tribal Court may be vested with exclusive jurisdiction over internal matters of the Tribe.

12.1.4 The Tribal Court also may be vested with jurisdiction over domestic relations where both spouses to the marriage are members of the Tribe and both reside on the Reservation or last resided together on the Reservation before the separation leading to their divorce.

12.1.5 The Tribal Court also may be vested with jurisdiction to enforce against a business located on the Reservation and members or nonmembers residing on the Reservation, tribal civil regulations regulating conduct on the Reservation enacted pursuant to Sections 10 or 17 of this Agreement. Any entity or person subject to those regulations is charged with notice of the

Tribe's regulations governing conduct on the Reservation and is subject to the enforcement of the regulations in the Tribal Court unless the Tribe specifically has exempted the entity or person from any or all regulation or enforcement in Tribal Court.

12.2 The original jurisdiction of the Tribal Court over the matters set forth in §§ 12.1.1.2, 12.1.1.3, 12.1.2 and 12.1.4 must be concurrent with the jurisdiction of the Court of Common Pleas of South Carolina, the Family Court, and the United States District Court for South Carolina. The original jurisdiction of the Tribal Court over the matters set forth in § 12.1.1.1 must be concurrent or exclusive depending upon the agreement of the parties. The original jurisdiction of the Tribal Court over matters set forth in § 12.1.3 must be exclusive. The original jurisdiction of the Tribal Court over matters set forth in § 12.1.5 must be exclusive unless the Tribe has waived exclusive jurisdiction as to any person or entity. As to all sections referred to in this section, jurisdiction over appeals, if any, must be governed by § 12.4.

12.3 The Tribe may waive Tribal Court jurisdiction or the application of tribal laws with respect to a person or firm residing, doing business, or otherwise entering upon the Reservation or contracting with the Tribe. In any contract or commercial transaction, a member of the Tribe may waive Tribal Court jurisdiction or specify in the contract the law of an appropriate jurisdiction to govern the commercial transaction or the interpretation of a contract.

12.4 All final judgments entered in actions tried in Tribal Court are subject to an appeal to the Family Court, the Court of Common Pleas, or the United States District court, depending upon whether that court would have had jurisdiction over the appealed matter had it been commenced in that court, if all of the following circumstances exist:

12.4.1 A party to the suit is not a member of the Tribe;

12.4.2 The amount in controversy or the cost of complying with an equitable order or decree exceeds the jurisdictional limits then applicable to the magistrates' courts of South Carolina;

12.4.3 The subject matter of the suit does not fall within § 12.1.1.1 if jurisdiction is exclusive or §§ 12.1.3 or 12.1.5. The Tribe may enlarge the right of appeal to include other subject matters and members of the Tribe, subject to rules and procedures the applicable court and relevant State laws may provide.

12.4.4 In an appeal, the court, as appropriate, may:

12.4.4.1 Enter judgment affirming the Tribal Court;

12.4.4.2 Dismiss the case for lack of jurisdiction of the Tribal Court, but only in those cases where the Tribal Court first has addressed the issue of its jurisdiction;

12.4.4.3 Reverse or remand the case for retrial or reconsideration in Tribal Court; or

12.4.4.4 Grant a trial de novo in its court.

12.4.5 In an appeal, a trial, or a trial de novo, the reviewing court shall apply any regulation enacted pursuant to Tribal authority.

12.4.6 In cases subject to §§ 12.1.2 or 12.4, all final judgments of the Tribal Court must be given full faith and credit in the state or federal court with appropriate jurisdiction, and the Tribal Court shall grant full faith and credit to state or federal court final judgments.

12.4.7 If a member of the Tribe seeks to enforce against a nonmember in state or federal court a final judgment of the Tribal Court in a case which is not subject to the provisions of 12.1.2 or 12.1.4, the judgment shall be reviewed by the state court in the manner provided in the Uniform Arbitration Act, S.C. Code Ann. 15-48-10 et. seq. and by the federal court in the manner provided in the United States Arbitration Act, Title 9 U.S. Code.

12.5 Sovereign Immunity.

12.5.1 The Tribe may sue or be sued, in a court of competent jurisdiction. However, the Tribe enjoys sovereign immunity including damage limits and, except as provided in this section, immunity from seizure, execution, or encumbrance of properties, to the same extent as the political subdivisions of the State as provided in the South Carolina Tort Claims Act, Chapter 78 of Title 15. With respect to nonconsumer liability based on contract, however, the Tribe, in a written contract, may provide that it is immune from suit on that contract as if there had been no waiver of sovereign immunity.

12.5.2 Notwithstanding the provisions of this section, the Tribe is subject to suit as provided in § 27-16-120(B) of the State Implementing Act.

12.5.3 The Tribe shall procure and maintain liability insurance with the same coverage and limits as required of political subdivisions of the State by S.C. Code Ann. 15-78-140(b).

12.5.4 An action alleging tortious conduct by an employee of the Tribe acting within the scope of his duties which seeks money damages against the Tribe must name only the Tribe as a party defendant.

12.5.5 A settlement or judgment in an action or a settlement of a claim filed with the Tribe constitutes a complete bar to further action by the claimant against the Tribe by reason of the same occurrence.

12.5.6 A claimant may file a verified claim for damages with the Tribe before filing suit but is not required to file the claim as a prerequisite to filing suit.

12.5.6.1 The claim must set forth the circumstances which brought about the loss, the extent of the loss, the time and the place the loss occurred, the names of all witnesses, if known, and the amount of the loss sustained.

12.5.6.2 The Tribe shall designate an employee or office to accept the filing of claims. Filing may be accomplished by receipt by the Tribe's designee of certified mailing of the claims or by compliance with the provisions of law relating to services of process.

12.5.6.3 If filed, the claim must be received within one year after the loss was or should have been discovered.

12.5.6.4 The Tribe has one hundred eighty days from the date of the filing of the claim in which to determine whether the claim is allowed or disallowed. Failure to notify the claimant of action upon the claim within one hundred eighty days after the filing of the claim is considered a disallowance of the claim.

12.5.6.5 While the filing of the claim is not required as a prerequisite to suit, if a claimant files a claim, he may not institute an action until after the occurrence of the earliest of one of the following three events:

12.5.6.5.1 passage of one hundred eighty days from the filing of the claim with the Tribe;

12.5.6.5.2 the Tribe's disallowance of the claim;

12.5.6.5.3 the Tribe's rejection of a settlement offer.

12.5.7 The provisions of the following sections of the South Carolina Tort Claims Act apply to the Tribe to the same extent as they apply to the State and its political subdivisions:

12.5.7.1 § 15-78-100(c), joint tort-feasors;

12.5.7.2 § 15-78-110, statute of limitations;

12.5.7.3 § 15-78-170, survival actions;

12.5.7.4 § 15-78-190, applicability of uninsured or underinsured defendant insurance.

12.5.8 If the Tribe's insurance coverage is inadequate or unavailable to satisfy a judgment within the limits of the Tort Claims Act, neither the judgment nor any other process may be levied upon the corpus or principal of the Tribal Trust Funds or upon property held in trust for the Tribe by the United States. However, the Tribe or the Secretary of Interior shall honor valid orders of a federal or state court which enters money judgments for causes of action against the Tribe arising after the effective date of this Agreement, by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment or payments of income from the Tribal Trust Funds.

12.6 Indian Child Welfare Act. The Indian Child Welfare Act, 25 U.S.C. § 1901, et. seq., (ICWA) shall apply to Catawba Indian children except as provided in this Section. Before the Tribe may assume jurisdiction over Indian child custody proceedings under the ICWA, the Tribe shall present to the Secretary for approval a petition to assume such jurisdiction, and the Secretary shall approve the petition in the manner prescribed in ICWA. Any

petition to assume jurisdiction over Indian child custody proceedings by the Tribe shall be considered and determined by the Secretary in accordance with the relevant provisions of ICWA. Assumption of jurisdiction under ICWA shall not affect any action or proceeding over which a court has already assumed jurisdiction. Until the Tribe has assumed jurisdiction over Indian child custody proceedings, the State shall retain exclusive jurisdiction over Indian custody proceedings; however, the State Court shall apply the Indian Child Welfare Act. ICWA shall not apply to private adoptions of Indian children under the jurisdiction of the Catawba Tribe under the ICWA where both parents consent to the adoption, or in the case of an unwed mother, the mother consents to the adoption when the father's consent is not necessary for the adoption under South Carolina Law § 20-7-1690 and any amendments thereto, and the parents or mother help choose adoptive parents, regardless of whether or not the adoptive parents are outside the preferences of the ICWA. However, the court may consider any benefits, material and cultural, the child may lose in determining whether the proposed adoption is in the best interests of the child; provided, however, that failure of the courts to make this consideration shall not be subsequently held to invalidate the adoption. In all cases of adoption, regardless of whether the ICWA applies, 25 U.S.C. § 1917 shall apply.

12.7 If no Tribal Court is established by the Tribe, the State shall exercise jurisdiction over all civil and criminal causes arising out of acts and transactions occurring on the Reservation or involving members of the Tribe. If the Tribe does establish a Tribal Court pursuant to Sections 11 or 12, § 11.2.2 or § 12.2 governs whether jurisdiction is exclusive or concurrent.

13. Tribal Trust Funds.

13.1 Purposes of Trust Funds. All funds paid pursuant to Section 5 of this Agreement, except for payments made pursuant to § 6.4, shall be deposited with the Secretary in trust for the benefit of the Tribe. Separate trust funds shall be established for the following purposes: Economic Development, Land Acquisition, Education, Social Services and Elderly Assistance, and Per Capita Payments. Except as provided in this section, the Tribe, in consultation with the Secretary, shall determine the share of settlement payments to be deposited in each Trust Fund, and define, consistently with the provisions of this section, the purposes of each Trust Fund and provisions for administering each, specifically including provisions for periodic distribution of current and accumulated income, and for invasion and restoration of principal.

13.2 Outside Management Option.

13.2.1 The Tribe, in consultation with and subject to the approval of the Secretary, as set forth in this Section, is authorized to place any of the Trust Funds under professional management, outside the Department of the Interior.

13.2.2 If the Tribe elects to place any of the Trust funds under professional management outside the Department

of the Interior, it may engage a consulting or advisory firm to assist in the selection of an independent professional investment management firm, and it shall engage, with the approval of the Secretary, an independent investment management firm of proven competence and experience established in the business of counseling large endowments, trusts, or pension funds.

13.2.3 The Secretary shall have 45 days to approve or reject any independent investment management firm selected by the Tribe. If the Secretary fails to approve or reject the firm selected by the Tribe within 45 days, the investment management firm selected by the Tribe shall be deemed to have been approved by the Secretary.

13.2.4 Secretarial approval of an investment management firm shall not be unreasonably withheld, and any Secretarial disapproval of an investment management firm shall be accompanied by a detailed explanation setting forth the Secretary' reasons for such disapproval.

13.2.5 For funds placed under professional management, the Tribe, in consultation with the Secretary and its investment manager, shall develop --

13.2.5.1.1 current operating and long-term capital budgets; and

13.2.5.1.2 a plan for managing, investing, and distributing income and principal from the Trust Funds to match the requirements of the Tribe's operating and capital budgets.

13.2.5.2 For each Trust Fund which the Tribe elects to place under outside professional management, the investment plan shall provide for investment of Trust Fund assets so as to serve the purposes described in this section and in the Trust Fund provisions which the Tribe shall establish in consultation with the Secretary and the independent investment management firm.

13.2.5.3 Distributions from each Trust Fund shall not exceed the limits on the use of principal and income imposed by the applicable provisions of this Agreement for that particular Trust Fund.

13.2.5.4.1 The Tribe's investment management plan shall not become effective until approved by the Secretary.

13.2.5.4.2 Upon submission of the plan by the Tribe to the Secretary for approval, the Secretary shall have 45 days to approve or reject the plan. If the Secretary fails to approve or disapprove the plan within 45 days, the plan shall be deemed to have been approved by the Secretary and shall become effective immediately.

13.2.5.4.3 Secretarial approval of the plan shall not be unreasonably withheld and any secretarial rejection of the plan shall be accompanied by a detailed explanation setting forth the Secretary's reasons for rejecting the plan.

13.2.5.5 Until the selection of an established investment management firm of proven competence and experience, the Tribe shall rely on the management, investment, and administration of the Trust Funds by the Secretary pursuant to the provisions of this section.

13.3 Transfer of Trust Funds; Exculpation of Secretary. Upon the Secretary's approval of the Tribe's investment management firm and investment management plan, all funds previously deposited in trust funds held by the Secretary and all funds subsequently paid into the trust funds, which are chosen for outside management, shall be transferred to the accounts established by an investment management firm in accordance with the approved investment management plan. The Secretary shall be exculpated by the Tribe from liability for any loss of principal or interest resulting from investment decisions made by the investment management firm. Any Trust Fund transferred to an investment management firm shall be returned to the Secretary upon written request of the Tribe, and the Secretary shall manage such funds for the benefit of the Tribe.

13.4 Land Acquisition Trust.

13.4.1 The Secretary shall establish and maintain a Catawba Land Acquisition Trust Fund, and until the Tribe engages an outside firm for investment management of this trust fund, the Secretary shall manage, invest, and administer this trust fund. The original principal amount of the Land Acquisition Trust Fund shall be determined by the Tribe in consultation with the Secretary.

13.4.2 The principal and income of the Land Acquisition Trust Fund may be used for the purchase and development of Reservation and non-Reservation land pursuant to the Settlement Agreement, costs related to land acquisition, and costs of construction of infrastructure and development of the Reservation and non-Reservation land.

13.4.2.1 Upon acquisition of the maximum amount of land allowed for expansion of the Reservation, or upon request of the Tribe and approval of the Secretary pursuant to the Secretarial approval provisions set forth in § 13.2.5.4 of this section, all or part of the balance of this trust fund may be merged into one or more of the Economic Development Trust Fund, the Education Trust Fund, or the Social Services and Elderly Assistance Trust Fund.

13.4.2.2 Alternatively, at the Tribe's election, the Land Acquisition Trust Fund may remain in existence after all the Reservation land is purchased in order to pay for the purchase of non-Reservation land.

13.4.2.3 The Tribe may pledge or hypothecate the income and principal of the Land Acquisition Trust Fund to secure loans for the purchase of Reservation and non-Reservation lands.

13.4.2.4 Following the effective date of the Federal Implementing legislation and before the final annual disbursement is made as provided in section 5 of the Federal Implementing legislation, the Tribe may pledge or hypothecate up to 50 percent of the unpaid annual installments required to be paid to this Trust Fund, the Economic Development Trust Fund and the Social Services and Elderly Assistance Trust Fund by section 5 of the Federal Implementing legislation and by Section 5 of this Agreement, to secure loans to finance the acquisition of Reservation or non-Reservation land or infrastructure improvements on such lands.

13.5 Economic Development Trust.

13.5.1 The Secretary shall establish and maintain a Catawba Economic Development Trust Fund, and until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer this Trust Fund. The original principal amount of the Economic Development Trust Fund shall be determined by the Tribe in consultation with the Secretary. The principal and income of this Trust Fund may be used to support tribal economic development activities, including but not limited to infrastructure improvements and tribal business ventures and commercial investments benefiting the Tribe.

13.5.2 The Tribe, in consultation with the Secretary, may pledge or hypothecate future income and up to 50 percent of the principal of this Trust Fund to secure loans for economic development. In defining the provisions for administration of this Trust Fund, and before pledging or hypothecating future income or principal, the Tribe and the Secretary shall agree on rules and standards for the invasion of principal and for repayment or restoration of principal, which shall encourage preservation of principal, and provide that, if feasible, a portion of all profits derived from activities funded by principal be applied to repayment of the Trust Fund.

13.5.3 Following the effective date of the Federal Implementing legislation and before the final annual disbursement is made as provided in section 5 of the Federal Implementing legislation, the Tribe may pledge or hypothecate up to 50 percent of the unpaid annual installments required to be paid by section 5 of the Federal Implementing legislation and by Section 5 of this Agreement to secure loans to finance economic development activities of the Tribe, including (but not limited to) infrastructure improvements on Reservation and non-Reservation lands.

13.5.4 If the Tribe develops sound lending guidelines approved by the Secretary, a portion of the income from this Trust Fund may also be used to fund a revolving credit account for loans to support tribal businesses or business enterprises of tribal members.

13.6 Education Trust. The Secretary shall establish and maintain a Catawba Education Trust Fund, and until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer this

Trust Fund. The original principal amount of this Trust Fund shall be determined by the Tribe in consultation with the Secretary; subject to the requirement that upon completion of all payments into the Trust Funds, an amount equal to at least 1/3 of all State, local, and private contributions made pursuant to the Settlement Agreement shall have been paid into the Education Trust Fund. Income from this Trust Fund shall be distributed to the Executive Committee periodically to fund vocational, adult, special and higher educational assistance programs administered by the Executive Committee for members of the Tribe. The principal of this Trust Fund shall not be invaded or transferred to any other Trust Fund, nor shall it be pledged or encumbered as security.

13.7 Social Services and Elderly Assistance Trust.

13.7.1 The Secretary shall establish and maintain a Catawba Social Services and Elderly Assistance Trust Fund and, until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer the Social Services and Elderly Assistance Trust Fund. The original principal amount of this Trust Fund shall be determined by the Tribe in consultation with the Secretary.

13.7.2 The income of this Trust Fund shall be periodically distributed to the Tribe to support social services programs, including (but not limited to) housing, care of elderly, or physically or mentally disabled Members, child care, supplemental health care, education, cultural preservation, burial and cemetery maintenance, and operation of tribal government.

13.7.3 The Tribe, in consultation with the Secretary, shall establish eligibility criteria and procedures to carry out this section.

13.8 Per Capita Payment Trust Fund.

13.8.1 The Secretary shall establish and maintain a Catawba Per Capita Payment Trust Fund in an amount equal to 15 percent of the settlement funds paid pursuant to Section 5 of this Agreement. Until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer the Catawba Per Capita Payment Trust Fund.

13.8.2 Each person whose name appears on the final base membership roll of the Tribe published by the Secretary pursuant to Section 7 will receive a onetime, nonrecurring payment from this Trust Fund.

13.8.3 The amount payable to each member shall be determined by dividing the trust principal and any accrued interest thereon by the number of members on the final base membership roll.

13.8.4.1 Subject to the provisions of this section each enrolled member who has reached the age of 21 years on the date the final base membership roll is published shall receive the payment on the date of distribution, which shall be as soon as practicable after date of publication of the final base membership roll. Adult Members shall be paid their pro rata share of this

Trust Fund on the date of distribution unless they elect in writing to leave their pro rata share in the Trust Fund, in which case such share shall not be distributed.

13.8.4.2 The pro rata share of Adult Members who elect not to withdraw their payment from this Trust Fund shall be managed, invested and administered, together with the funds of Members who have not attained the age of 21 years on the date the final base membership roll is published, until such Member requests in writing that their pro rata share be distributed, at which time such Member's pro rata share shall be paid, together with the net income of the Trust Fund allocable to such Member's share as of the date of distribution.

13.8.4.3 No Member may elect to have their pro rata share managed by this Trust Fund for a period of more than 21 years after the date of publication of the final base membership roll.

13.8.5.1 Subject to the provisions of this section, the pro rata share of any Member who has not attained the age of 21 years on the date the final base membership roll is published shall be managed, invested and administered pursuant to the provisions of this section until such Member has attained the age of 21 years, at which time such Member's pro rata share shall be paid, together with the net income of the Trust Fund allocable to such Member's share as of the date of payment. Such Members shall be paid their pro rata share of this Trust Fund on the date they attain 21 years of age unless they elect in writing to leave their pro rata share in the Trust Fund, in which case such share shall not be distributed.

13.8.5.2 The pro rata share of such Members who elect not to withdraw their payment from this Trust Fund shall be managed, invested and administered, together with the funds of members who have not attained the age of 21 years on the date the final base membership roll is published, until such Member requests in writing that their pro rata share be distributed, at which time such Member's pro rata share shall be paid, together with the net income of the Trust Fund allocable to such Member's share as of the date of distribution.

13.8.5.3 No Member may elect to have their pro rata share retained and managed by this Trust Fund beyond the expiration of 21 years after the date of publication of the final base membership roll.

13.8.6 After payments have been made to all Members entitled to receive payments, this Trust Fund shall terminate, and any balance remaining in this Trust Fund shall be merged into the Economic Development Trust Fund, the Education Trust Fund, or the Social Services and Elderly Assistance Trust Fund, as the Tribe may determine.

13.9 Duration Of Trust Funds. Subject to the provisions of this section and with the exception of the Catawba per Capita Payment Trust Fund, the Trust Funds established in accordance with this section shall continue in existence so long as the Tribe exists and is recognized by the United States. The

principal of these Trust Funds shall not be invaded or distributed except as expressly authorized in the Federal Implementing legislation or in the Agreement.

13.10 Transfer Of Money Among Trust Funds. The Tribe, in consultation with the Secretary, shall have the authority to transfer principal and accumulated income between Trust Funds only as follows:

13.10.1 Funds may be transferred among the Catawba Economic Development Trust Fund, the Catawba Land Acquisition Trust Fund and the Catawba Social Services and Elderly Assistance Trust Fund, and from any of those three Trust Funds into the Catawba Education Trust Fund; except, that the mandatory share of State, local, and private sector funds invested in the original corpus of the Catawba Education Trust Fund shall not be transferred to any other Trust Fund.

13.10.2 Any Trust Fund, except for the Catawba Education Trust Fund, may be dissolved by a vote of two-thirds of those Members eligible to vote, and the assets in such Trust Fund shall be transferred to the remaining Trust Funds; except, that (A) no assets shall be transferred from any of the Trust Funds into the Catawba per Capita Payment Trust Fund, and (B) the mandatory share of State, local and private funds invested in the original corpus of the Catawba Education Trust Fund may not be transferred or used for any non-educational purposes.

13.10.3 The dissolution of any Trust Fund requires the approval of the Secretary pursuant to the Secretarial approval provisions set forth in § 13.2.5.5 of this section.

13.11 Trust Fund Accounting.

13.11.1 The Secretary shall account to the Tribe periodically, and at least annually, for all Catawba Trust Funds being managed and administered by the Secretary. The accounting shall:

13.11.1.1 identify the assets in which the Trust Funds have been invested during the relevant period;

13.11.1.2 report income earned during the period, distinguishing current income and capital gains;

13.11.1.3 indicate dates and amounts of distributions to the Tribe, separately distinguishing current income, accumulated income, and distributions of principal; and

13.11.1.4 identify any invasions or repayments of principal during the relevant period and record provisions the Tribe has made for repayment or restoration of principal.

13.11.2 Any outside investment management firm engaged by the Tribe shall account to the Tribe and separately to the Secretary at periodic intervals, at least quarterly. Its accounting shall

13.11.2.1 identify the assets in which the Trust Funds have been invested during the relevant period;

13.11.2.2 report income earned during the period, separating current income and capital gains;

13.11.2.3 indicate dates and amounts of distributions to the Tribe, distinguishing current income, accumulated income, and distributions of principal; and

13.11.2.4 identify any invasions or repayments of principal during the relevant period and record provisions the Tribe has made for repayment or restoration of principal.

13.11.3 Prior to distributing principal from any Trust Fund, the investment management firm shall notify the Secretary of the proposed distribution and the Tribe's proposed use of such funds, following procedures to be agreed upon by the investment management firm, the Secretary, and the Tribe. The Secretary shall have 15 days within which to object in writing to any such invasion of principal. Failure to object will be deemed approval of the distribution.

13.11.4 All Trust Funds held and managed by any investment management firm shall be audited annually by a certified public accounting firm approved by the Secretary, and a copy of the annual audit shall be submitted to the Tribe and to the Secretary within four months following the close of the Trust Funds's fiscal year.

13.12 Replacement Of Investment Management Firm And Modification Of Investment Management Plan. The Tribe shall not replace the investment management firm approved by the Secretary without prior written notification to the Secretary and approval by the Secretary of any investment management firm chosen by the Tribe as a replacement. Such Secretarial approval shall be given or denied in accordance with the Secretarial approval provisions contained in §§ 13.2.5.4.2 and 13.2.5.4.3. The Tribe and its investment management firm shall also notify the Secretary in writing of any revisions in the investment management plan which materially increase investment risk or significantly change the investment management plan, or the agreement, made in consultation with the Secretary pursuant to which the outside management firm was retained.

13.13 Trust Funds Not Counted For Certain Purposes; Use As Matching Funds. None of the funds, assets, income, payments, or distributions from the trust funds established pursuant to this section shall at any time affect the eligibility of the Tribe or its Members for, or be used as a basis for denying or reducing funds to the Tribe or its Members under any Federal, State, or local program. Distributions from these Trust Funds may be used as matching funds, where appropriate, for Federal grants or loans.

14. Establishment of Expanded Reservation.

14.1 Existing Reservation. The State currently holds in trust approximately 630 acres of land which is referred to in this Agreement as the "existing reservation." Upon final enactment of all implementing legislation, the State shall convey the existing reservation to the United States of America as trustee for the Tribe, and the obligation of the State as trustee for the Tribe with respect to this land shall cease.

14.2 Expanded Reservation.

14.2.1 Within 180 days from enactment of the implementing legislation, the Secretary, after consultation with the Tribe, shall ascertain the boundaries and area of the existing reservation. In addition, the Secretary, after consulting with the Tribe, shall engage a professional land planning firm as provided in this Agreement. The Secretary shall bear the cost of all services rendered pursuant to this section.

14.2.2 With the assistance of the Secretary or the planning firm, the Tribe may canvass land owners in the Primary Expansion Zone to identify additional tracts that the Tribe may be able to acquire. The Tribe, with the assistance of the planning firm, will determine the scope of its canvass, based on those tracts it wants to acquire and those landowners it considers likely to sell.

14.2.3 Upon final enactment of all implementing legislation the Tribe, or the Secretary may purchase and place in Reservation status only those tracts of lands that are bounded by the existing reservation, or bounded by a tract that has been acquired as part of the expanded reservation and placed in reservation status. Prior to final approval of its Non-Contiguous Development Plan application as described below, the Tribe may obtain options upon and purchase noncontiguous (or "outlying") tracts of land not bounded by the existing or expanded reservation, but no such noncontiguous tract shall be eligible to be placed in reservation status until the Tribe's application for a Non-Contiguous Development Plan has been approved. In assembling tracts, contiguity will not be deemed broken by state or federal roads or by public rights of way; and lands on the eastern bank of the Catawba River opposite the Reservation shall be considered contiguous to the Reservation if the western boundary of any such tract joins the eastern boundary of the Reservation when the boundaries of both are extended to the middle of the river. Tracts acquired for the expanded reservation shall not deny access to lands owned by nonmembers of the Tribe.

14.2.4 When a parcel that can be purchased has been identified and the price has been negotiated, a description of the property and its price, together with other pertinent information and the terms of purchase, shall be presented to the Tribe. If the Tribe approves the purchase, the Secretary or the Tribe may proceed with closing after completion of a title examination, a preliminary subsurface soil investigation, and a level one environmental audit. The Secretary shall bear the cost of all such examinations by the Tribe. Payment of any option fee and the purchase price may, at the Tribe's election, be drawn from the Tribe's Land Acquisition Trust Fund.

14.2.5 The total area of the expanded reservation will be limited to 3,000 acres, including the existing reservation, but the Tribe may exclude from this limit up to 600 acres of additional land if such land is (i) within rights-of-way for public roads or public utilities rendered unusable for development by the easement or right-of-way; (ii) within the 100-year flood plain

of the Catawba River as defined by the Federal Emergency Management Agency, or its successor; (iii) non-developable wetland defined or restricted by law or regulation such that buildings, structures, and other improvements are prohibited; and (iv) park and recreational land accessible to the public and dedicated permanently to public use. After completion of a comprehensive development plan, the Tribe may seek to have the permissible area of the expanded reservation enlarged to a maximum of 3,600 acres, plus up to 600 acres of land as described in (i) through (iv) above. Any such expansion shall be first approved, however, by ordinance of the county council governing any area where the additional lands are to be acquired, and by a law or joint resolution enacted by the General Assembly signed by the Governor of South Carolina. Following such approval, the Tribe may, if it has not previously done so, acquire such additional lands. Thereafter the Tribe may request the Secretary to hold such lands in trust. Upon request by the Tribe that such additional lands acquired by the Tribe be taken into trust, the Secretary may take such lands into trust and, if he does so, shall hold the same, together with the existing reservation which the State is to convey to the United States, in trust for the Tribe.

14.2.6 The Tribe in consultation with the Secretary, shall make every reasonable effort to expand the existing reservation by assembling a composite tract of contiguous parcels that border and surround the existing Reservation. Before requesting that any noncontiguous land be held in reservation status, the Tribe shall submit to the county council in any county where it proposes that any noncontiguous tracts be placed in reservation status a Non-Contiguous Development Plan Application ("Application"), which shall include the following:

14.2.6.1 A statement of the Tribe's needs, objectives, and priorities for its Reservation, including planning goals for (1) single and multifamily residential units; (2) recreational amenities; (3) historical sites to be preserved; (3) business and industrial parks; (4) common areas, parks, and open space; (5) roads, streets, utilities, and tribal government and community facilities.

14.2.6.2 An acquisition and land-use plan, based on the Tribe's planning goals and objectives, showing tracts, both contiguous to the Reservation and not contiguous, which the Tribe has acquired or optioned, and identifying where reasonably possible those areas that the Tribe seeks to acquire tracts to place in reservation status, in either the Primary or Secondary Expansion Zones. The acquisition and land-use plan need not be location-specific as to all uses, but should show the expanded reservation as then configured and should designate existing uses, roads, and topographical features including flood plain. Prior to submitting the acquisition and land-use plan to the county council in the county where the Tribe seeks to acquire noncontiguous tracts for reservation status, the Tribe will review the plan with county planning authorities. To avoid speculation in land prices, examination of the Tribe's future land use plans

may be restricted by the Tribe to appropriate state and local officials, and these officials will be bound to protect confidential aspects of the plans. The acquisition and land-use plan should endeavor to meet the following guidelines: (i) the plan should attempt to cluster the noncontiguous parcels within the Primary Expansion Zone so that each is located as close as possible to the expanded reservation; (ii) the plan should endeavor to locate all noncontiguous parcels within the Primary Expansion Zone, and confine the number of outlying parcels in all Expansion Zones to three with no more than two in any one Zone; (iii) the plan should seek to assemble only noncontiguous parcels of significant size, using 250 acres as the criterion for a minimum desirable area; (iv) the plan should undertake to show that the outlying parcels will be used for purposes which are compatible with desired existing uses of the surrounding property; (v) the plan should follow generally accepted standards of good land-use planning, providing for the mitigation of environmental impacts and incompatible land uses, and providing traffic and utility planning, building setbacks and density; (vi) the plan for acquiring noncontiguous tracts should avoid the selection of sites or configurations that could leave fragments of unusable land or create hardship for owners of adjoining parcels.

14.2.6.3 The Tribe shall prepare a report of the Tribe's and the Secretary's efforts, acting on behalf of the Tribe, to acquire contiguous tracts at fair market value, showing why it is not possible, practical, or advisable to assemble contiguous parcels into a composite tract, as provided in this Section, and including a certificate to this effect. The Tribe's report will include relevant data on tracts that the Tribe or the Secretary has sought but failed to purchase because of price, terms, or the seller's refusal.

14.2.6.4 Criteria controlling the Tribe's selection of outlying tracts that the Tribe will seek to purchase, provided its Application is finally approved; shall include (i) the minimum area of tracts to be acquired, (ii) the location of outlying tracts in relation to the expanded and the maximum distance between outlying tracts and the nearest boundary of the expanded reservation, (iii) the number of outlying tracts the Tribe intends to acquire in each Zone, (iv) an identification of outlying tracts already owned or under option or targeted for acquisition if the Application is finally approved, (v) provisions for assuring that proposed uses of tracts to be acquired are compatible with existing uses of surrounding property and will not interfere with essential public services, and (vi) a means of assuring that noncontiguous tracts can be marked and readily identified as reservation property.

14.2.7 The Tribe shall present its Application to the county council of each county in which the Tribe proposes to purchase noncontiguous tracts to be placed in reservation status. The county council shall make findings on the extent to which the

Application has met the criteria set forth in § 14.2.6, and recommend to the Governor whether or not the Application should be approved. After receiving the county council's recommendation, the Tribe either may modify its Application and re-submit it to the county council, or present it to the Governor for approval. The Governor shall review the Application and decide whether to approve or disapprove it on the basis of the criteria set forth above. Neither the county council's approval nor the Governor's approval shall unreasonably be withheld, and the Governor's final action shall be subject to review under the Administrative Procedure Act.

14.2.8 Upon approval by the Governor of the Tribe's Non-Contiguous Development Plan Application, the Tribe may request that the Secretary take such noncontiguous tracts in reservation status, in accordance with the Plan and the provisions of this Agreement, and the Secretary, in consultation with the Tribe, shall proceed to place noncontiguous tracts in reservation status.

14.3 Primary Expansion Zone. The Tribe shall endeavor at the outset to acquire contiguous tracts for the expanded in the area referred to in this Agreement as the "Primary Expansion Zone." The Primary Expansion Zone shall lie within the area bounded by S.C. Highway No. 5 on the south running northwesterly to its intersection with Springdale Road on the west and thence northeasterly to the Catawba River along Sturgis Road; thence east along the Catawba River to its confluence with Sugar Creek; north along Sugar Creek to its intersection with S.C. Highway No. S-29-41 (Doby Bridge Road); thence with S.C. Highway S-29-41 to its intersection with U.S. Highway No. 521; thence with U.S. Highway No. 521 in a southerly direction to its intersection with S.C. Highway No. S-29-55 (Van Wyck Road) on the east; and thence with S.C. Highway No. S-29-55 to its intersection with Twelve Mile Creek on the south; and thence with Twelve Mile Creek to S.C. Highway No. 5 on the south. This entire area will be known as the "Catawba Reservation Primary Expansion Zone."

14.4 Secondary Expansion Zone. The Tribe, may elect to purchase contiguous tracts in an alternative area described in this Agreement as the Secondary Expansion Zone, under the approval provisions set out in § 14.2.6 above. The Secondary Expansion Zone shall consist of the area bounded by Sugar Creek on the west; the Catawba River on the south extending to the Norfolk Southern Railway trestle on the west; thence northerly with the railroad right-of-way to its intersection with S.C. S-46-329 (Brickyard Road); thence east to S.C. S-46-41 (Doby Bridge Road); thence easterly along S.C. S-46-41 to its intersection with Sugar Creek. This area shall be known as the "Catawba Reservation Secondary Expansion Zone."

14.5 Other Expansion Zone. The Primary and Secondary Expansion Zones are the preferred and only approved zones for expansion of the Reservation. However, after completing a comprehensive plan of development, the Tribe may propose different or

additional expansion zones; but any such zone first must be approved by ordinance of the county council where the zone is located, and by law or joint resolution enacted by the General Assembly of South Carolina and signed by the Governor. The combined area of all land acquisitions, including land in any specially approved zones, shall not exceed the limits imposed by § 14.2.5.

14.6 Future Highways. Prior to the Tribes' planning process, the South Carolina Department of Highways and Public Transportation will consult with the Tribe about planned and proposed major highways within the Primary and Secondary Expansion Zones, including the proposed extension of Dave Lyle Boulevard (South Carolina Highway No. 122) from the City of Rock Hill across the Catawba River into Lancaster County. In accordance with the letter to the Tribe from the City of Rock Hill, dated August 28, 1992, the City of Rock Hill and the South Carolina Department of Highways and Public Transportation will consult the Tribe about access to Dave Lyle Boulevard Extension, and in cooperation with the Tribe, will plan and provide for an interchange assuring access to Dave Lyle Boulevard Extension over a public road in reasonable proximity to the expanded reservation.

14.7 Future Sewage Treatment Facilities. Prior to the Tribe's planning process, the South Carolina Department of Health and Environmental Control (DHEC) will consult with the Tribe about the location of future sewage treatment facilities that may serve the Primary and Secondary Expansion Zones. Such treatment facilities include, but are not limited to, the treatment plant proposed by the Charlotte-Mecklenburg Utilities Department near the confluence of the Catawba River and Twelve Mile Creek in Lancaster County and all pump stations and transmission lines, gravity and pressure. If this or a similar regional treatment plant is constructed here or in the vicinity of this site, DHEC will endeavor to ensure that the commitments of the City of Rock Hill, set forth in its letter to the Tribe dated August 28, 1992, are carried out (i) by locating the City's sewage transmission line to the regional treatment plant in reasonable proximity to the Reservation and (ii) by allowing the Tribe the right of access to such transmission line for a tap fee and on other terms similar to those for municipalities using this treatment facility. The Tribe will be responsible for the design, construction, operation, and maintenance of its own sewage collection system and for the cost of constructing any extension line and tap to the transmission line. The Tribe will also be subject to fees for use of the treatment system and transmission line, and subject to all regulations imposed on users of the system, but DHEC will endeavor to ensure that such fees, charges, and rules are the same as applied to municipal users of the system. If the Tribe is required to construct an extension line to connect with a transmission line the Tribe may charge non-reservation users along such extension line reasonable tap and user fees.

14.8 Voluntary Land Purchases. The power of eminent domain shall not be used by the Secretary or any governmental authority in acquiring parcels of land for the benefit of the Tribe,

whether or not the parcels are to be part of the Reservation. All such purchases shall be made only from willing sellers by voluntary conveyances. Conveyances by private land owners to the Tribe or the Secretary for the expanded reservation will be deemed, however, to be involuntary conversions within the meaning of Section 1033 of the Internal Revenue Code of 1986, as amended. Filing and recording fees and all documentary tax stamps and any other fees incident to the conveyance of real estate will be payable in connection with such purchases regardless of whether the property is purchased by the Tribe or by the United States in trust for the Tribe. Real property taxes levied for the year of closing will be prorated and paid at closing, or if the amount of property taxes to be due cannot then be calculated, property taxes will be estimated and escrowed at closing. Notwithstanding the provisions of Section 257 and 258a of Title 40, the Secretary may acquire a less than complete interest in land otherwise qualifying under Section 14 for treatment as Reservation land for the benefit of the Tribe from the ostensible owner of the land if the Secretary and the ostensible owner have agreed upon the identity of the land to be sold and upon the purchase price and other terms of sale. If the ostensible owner agrees to the sale, the Secretary may use condemnation proceedings to perfect or clear title and to acquire any interests of putative cotenants whose address is unknown or the interests of unknown or unborn heirs or persons subject to mental disability.

14.9 <u>Rollback Taxes</u>. The purchase of any land specially assessed as farmland or timberland by York or Lancaster County will not result in a rollback of property taxes provided the property is placed by the Tribe in reservation status within one year of the date of purchase. If any specially assessed land is acquired and not made part of the Reservation within one year, deferred or rollback taxes will be due and payable without interest to the county treasurer.

14.10 <u>Terms and Conditions of Acquisition</u>. Subject to the provisions of this Section, the Tribe or the Secretary will be authorized to: (i) ascertain the market value of lands to be purchased; to enter into options and contracts for reservation and non-reservation lands upon such conditions as they deem appropriate; (ii) to acquire, when necessary, the reversionary fee in leases and the remainder fee in life estates; (iii) to acquire lands subject to leases and timber interests and subject to easements, covenants, and restrictions that will not impair usefulness of the lands for the Tribe's purposes. The Tribe or the Secretary, acting in behalf of the Tribe and with its consent, and subject to the provisions of this section, is also authorized to execute and deliver purchase-money notes, mortgages, and other debt and security instruments, to acquire both reservation and non-reservation lands. When property is acquired for the Tribe through purchase-money financing, and encumbered by a purchase-money mortgage, the mortgagee shall have the right to foreclose under South Carolina law in the event of default as defined in the note and mortgage.

14.11 Easements Over Reservation. The acquisition of lands for the expanded reservation shall not extinguish any easements or rights-of-way then encumbering such lands unless the Secretary or the Tribe enters into a written agreement with the owners terminating such easements or rights-of-way. The Secretary, with the approval of the Tribe, shall have the power to grant or convey easements and rights-of-way for public roads, public utilities, and other public purposes over the Reservation. Unless the Tribe and the State agree upon a valuation formula for pricing easements over the Reservation, the Secretary shall be subject to proceedings for condemnation and eminent domain to acquire easements and rights of way for public purposes through the Reservation under the laws of the State of South Carolina in circumstances where no other reasonable access is available. With the approval of the Tribe, the Secretary may also grant easements or rights-of-way over the Reservation for private purposes; and implied easements of necessity shall apply to all lands acquired by the Tribe, unless expressly excluded by the parties.

14.12 Jurisdictional Status. Only land made part of the Reservation shall be governed by the special jurisdictional provisions set forth in this Agreement.

14.13 Sale and Transfer of Reservation Lands. At the request of the Tribe, and with the approval of the Secretary, the Secretary may sell, exchange, or lease lands within the Reservation, or sell timber or other natural resources on the Reservation. The proceeds from these transactions may be used to reinvest in other land contiguous to the Reservation or in improvements for the common use of the Tribe on the Reservation; or if the Tribe deems it appropriate, the proceeds may be placed in the Education Trust Fund, the Elderly Assistance Trust Fund, the Land Acquisition Trust Fund, or the Economic Development Trust Fund. At the request of the Tribe and with the approval of the Secretary, the Secretary may exchange like-kind parcels of land on the Reservation for contiguous parcels of land not currently part of the Reservation. Notwithstanding the provisions of this section, the area of the Reservation shall not exceed the limits imposed by § 14.2.5.

14.14 Time Limit on Acquisitions. All acquisitions of contiguous land to expand the Reservation or of noncontiguous lands to be placed in reservation status shall be completed or under contract of purchase within ten years from the date the last payment is made into the Land Acquisition Trust; except, however, that the Tribe may continue to acquire parcels which are contiguous to either of two designated reservation areas for a period of twenty years after the date the last payment is made into the Land Acquisition Trust.

14.15 Leases of Reservation Lands. The provisions of 25 U.S.C. §415 shall not apply to the Tribe and its Reservation. The Tribe shall be authorized to lease its Reservation lands for terms up to but not exceeding ninety-nine (99) years, with or without the approval of the Secretary. With regard to any lease of Reservation lands not approved by the Secretary, the Secretary

shall be exculpated by the Tribe from any liability arising out of any loss incurred by the Tribe as a result of the unapproved lease.

14.16 Non-Applicability of BIA Land Acquisition Regulations. The general land acquisition regulations of the Bureau of Indian Affairs, currently contained in 25 C.F.R. Part 151, shall not apply to the acquisition of lands authorized by Section 14 of this Agreement.

15. Non-Reservation Properties.

15.1 Acquisition of Non-Reservation Properties. The Tribe may draw upon the corpus or accumulated income of the Land Acquisition Trust or the Economic Development Trust to acquire parcels of real estate outside the Reservation, including properties ancestral or historic to the Tribe and properties to be held by the Tribe for investment or development. Any Non-Reservation properties shall be held in fee simple by the Tribe as a corporate entity or by a subentity of the Tribe and will not be part of the Reservation, or governed by the special jurisdictional provisions set forth in this Agreement, or subject to any other special attributes on account of their ownership by the Tribe as a corporate entity, except as provided in § 15.2. Notwithstanding any other provisions of law, the Tribe may lease, sell, mortgage, restrict, encumber, or otherwise dispose of such non-reservation lands in the same manner as other persons and entities under State law; and the Tribe as land owner shall be subject to the same obligations and responsibilities as other persons and entities under State, federal, and local law, including local zoning and land use laws and regulations. Ownership and transfer of non-reservation parcels shall not be subject to federal law restrictions on alienation, including, but not limited to, the restrictions imposed by federal common law and the provisions of the Trade and Intercourse Act of 1790, Act of July 22, 1790, and all amendments thereto.

15.2 Jurisdiction on Non-Reservation Properties. The laws, ordinances, taxes, and regulations of the State and its subdivisions shall apply to such non-reservation properties in the same manner as such laws, ordinances, taxes, and regulations would apply to any other properties held by non-Indians located in the same jurisdiction, except as provided in South Carolina Code of Laws, § 27-16-110. However, non-reservation land shall be eligible for federal grants and other federal services for the benefit of Indians or Indian tribes, and for such purposes shall be treated as if it were designated as reservation land or land held in trust by the United States.

16. Games of Chance.

16.1 Inapplicability of Indian Gaming Regulatory Act. The Indian Gaming Regulatory Act, 25 U.S.C. § 2701, et seq., shall not apply to the Tribe. This Agreement, and the implementing legislation passed pursuant to this Agreement, and all laws, ordinances, and regulations of the State of South Carolina, and its political subdivisions, shall govern the regulation of gambling

devices and the conduct of gambling or wagering by the Tribe on and off the Reservation, except as specifically provided in this section.

16.2 Conduct of Gambling or Wager by the Tribe on and off the Reservation. Except as specifically provided in the Federal Implementing legislation and this Agreement, all laws, ordinances, and regulations of South Carolina and its political subdivisions govern the conduct of gambling or wager by the Tribe on and off the Reservation.

16.3 The State shall govern the conduct of bingo under Article 23, Chapter 21 of Title 12, Regulation of Bingo Games, including regulations or rulings issued in relation to that article, except as provided by the special bingo license to which the Tribe is entitled in accordance with this section if it elects to sponsor bingo games under the special license.

16.3.1 For purposes of conducting the game of bingo, the Tribe is deemed a nonprofit organization under Article 23, Chapter 21 of Title 12 of the S.C. Code.

16.3.2 If the Tribe elects to conduct the game of bingo either on or off the Reservation, the Tribe shall obtain a license from the South Carolina Tax Commission. Based on the Tribe's election, the Tribe may be licensed by the South Carolina Tax Commission to conduct games of bingo under a regular license allowed nonprofit organizations or under the special license provided by this section.

16.4 The Tribe may apply to the South Carolina Tax Commission for a special bingo license in lieu of licenses authorized by Article 23, Chapter 21 of Title 12 of the S.C. Code. A special or regular license must be granted if the Tribe complies with the licensing requirements and procedures. The special license is identical in all respects to the class of license permitting the highest level of prizes allowed by law and carries the same privileges and duties as the class of license permitting the highest level of prizes provided by law, except:

16.4.1 The frequency of the sessions must be determined by the Tribe but must be no more frequent than six sessions a week, with sessions on Sundays prohibited unless state law otherwise expressly allows Sunday sessions.

16.4.2 The amount of prizes offered each session must be determined by the Tribe, but must not be greater than one hundred thousand dollars for any game.

16.4.3 The Tribe shall pay, in lieu of an admission, a head, a license, or any other bingo tax, a special bingo tax equal to ten percent of the gross proceeds received during each session. No other federal, state, or local taxes apply to the revenues generated by the bingo games operated by the Tribe. All revenues derived from the special bingo tax must be collected by the South Carolina Tax Commission and deposited with the State Treasurer for the benefit of the General Fund of South Carolina.

16.4.4 At least fifty percent of the gross proceeds received by the Tribe during a calendar quarter must be returned to the players in the form of prizes. For purposes of this

section, "gross proceeds" does not include the ten percent special bingo tax.

16.4.5 The Tribe is entitled to two bingo licenses, and these licenses may be used to operate at two locations only. They are not assignable to any other entity or individual.

16.4.6 The net proceeds derived by the Tribe from the conduct of bingo may be used for any purpose authorized by the Tribe.

16.5 The Tribe may elect to operate one of the games under a special bingo license off the Reservation and not within the one hundred forty-four thousand acre Catawba Claim Area, but before doing so, it first must obtain the approval of the governing authority of the county and any municipality in which it seeks to locate the facility. If the Tribe elects to operate one or both of the games off the Reservation but within the one hundred forty-four thousand acre Catawba Claim Area, it shall do so in an area zoned compatibly for commercial activities after consulting with the municipality or county where a facility is to be located.

16.6 The sponsor and promoter of the bingo games must be the Catawba Indian Tribe, and all profits gained from the enterprise accrue to the Tribe. The South Carolina Tax Commission, or its regulatory successor, has the power to administer, oversee, and regulate all bingo games sponsored and conducted by the Tribe, audit and enforce the operation of the games, and assess and collect taxes, interest, and penalties in accordance with the laws and regulations of the State as they apply to the Tribe. The South Carolina Tax Commission, or its regulatory successor, has the right to suspend or revoke the Tribe's bingo license or special bingo license if the Tribe violates the law with regard to conducting the game. However, the Tax Commission, or its regulatory successor, first shall notify the Tribe of violations and provide the Tribe with an opportunity to correct the violations before its license may be revoked. Failure to pay bingo taxes, interest, or penalties may be grounda for license revocation.

16.7 A license of the Tribe to conduct bingo must be revoked if the game of bingo is no longer licensed by the State. If the State resumes licensing the game of bingo, the Tribe's license or special license must be reinstated if the Tribe complies with all licensing requirements and procedures.

16.8 The Tribe may permit on its Reservation video poker or similar electronic play devices to the same extent that the devices are authorized by State law. The Tribe is subject to all taxes, license requirements, regulations, and fees governing electronic play devices provided by state law, except if the reservation is located in a county or counties which prohibit the devices pursuant to state law, the Tribe nonetheless must be permitted to operate the devices on the Reservation if the governing body of the Tribe so authorizes, subject to all taxes, license requirements, regulations, and fees governing electronic play devices provided by state law.

16.9 If the Tribe elects to sponsor and conduct games of bingo under a regular license allowed nonprofit organizations under Article 23, Chapter 21 of Title 12 of the Code of S.C., the Tribe must be taxed as a nonprofit corporation under that article.

17. Governance and Regulation of Reservation.

17.1 Building Code. The Tribe shall incorporate by reference and adopt the York County Building Code, and any amendments thereto hereafter adopted, and may contract with York County, South Carolina for the services necessary to enforce, inspect, and regulate compliance with its Building Code. Such services shall be provided at no charge by York County as an in-kind contribution toward settlement. In addition, those local jurisdictions which exact any fee, permit, or inspection services shall waive the fees otherwise charged for building permit or inspection services on the Reservation. The Tribe shall be empowered, but not required, to adopt building code provisions to be applied on the Reservation in addition to, but not in derogation of, the York County Building Code, as amended from time to time.

17.2 Environmental Laws. All federal, state, and local environmental laws and regulations shall apply to the Tribe and to the Reservation, and shall be fully enforceable by all relevant federal, state, and local agencies and authorities. Similarly, all requirements that a license, permit, or certificate be obtained from any federal, state, or local agency shall also apply to the Tribe and to the Reservation. This provision shall include all such laws and regulations now in effect and all amendments adopted hereafter. This provision shall extend without limitation to all environmental laws and regulations adopted in the future. The Tribe, the Executive Committee, and all members of the Tribe shall have the same status under all such laws as other citizens or groups of citizens to contest, object to, or intervene in any proceeding or action in which environmental regulations are being made, adjudicated, or enforced, or in which licenses, permits, or certificates of convenience and necessity are being issued by any agency of federal, state, or local government. Notwithstanding any other provisions of law now or hereafter adopted, the Tribe shall not have special or preferential status in any such action or proceeding, or rights, privileges, or standing any greater than the rights, privileges, and standing allowed other citizens or citizen organizations. The Tribe shall have the authority to impose regulations applying higher environmental standards to the Reservation than those imposed by federal or state law or by local governing bodies; but such tribal regulations shall apply only to the Reservation, and not to property surrounding the Reservation or non-reservation property, or to the use of the Catawba River. Such tribal regulations shall also not apply to activities or uses off the Reservation, even if those activities affect air quality on the Reservation. The Tribe shall not be authorized to invoke sovereign immunity against any suit, proceeding, or environmental

enforcement action involving any federal, state, or local environmental laws or regulations, and shall be subject to all enforcement orders, restraining orders, fees, fines, injunctions, judgments and other corrective or remedial measures imposed by such laws. Provided, however, it is not the intent of the parties that the Tribe, or the Secretary when acting on behalf of the Tribe, be required to comply with duplicative federal laws and regulations that would not apply to Tribal or Secretarial actions if these actions were taken instead by a private corporation; and, recognizing that this provision may be insufficient to insure fulfillment of this intention, it is also the intent of the parties to use, if necessary, the provisions of § 15(f) of the Federal Implementing legislation to draft a provision sufficient to fulfill the parties' intention in this regard.

17.3 Planning and Zoning. With respect to any land use regulation within the Reservation, the Tribe shall have the power to adopt and enforce a land use plan after consultation with York County and Lancaster County, for those parts of the Reservation located in those respective jurisdictions. The Tribe and the affected governing bodies shall follow the consultative procedures created for settlement of the claim of the Puyallup Tribe in the State of Washington, as set out in House Report 101- 57, pages 161-64. In determining whether to permit the construction of any buildings or improvements on the Reservation, the Tribe shall consider (1) the protection of established or planned residential areas from any use or development that would adversely affect residential living off the Reservation; (2) protection of the health, safety, and welfare of the surrounding community; and (3) preservation of open spaces, rivers, and streams, and provision of public facilities to support development.

17.4 Health Codes. All public health codes of the State of South Carolina and any county in which the Reservation is located shall be applicable on the Reservation.

17.5 Hunting and Fishing. Hunting and fishing, on or off the Reservation, shall be conducted in compliance with the laws and regulations of the State of South Carolina. Members of the Tribe shall be subject to all state and local regulations governing hunting and fishing both on and off the Reservation, except, however, during the period established by § 3.2 of this Agreement members of the Tribe shall be entitled to personal state hunting and fishing licenses without payment of fees. However, the Tribe and its members shall be subject to the same fees and requirements as all other citizens of the State in applying for and obtaining commercial hunting and fishing licenses. The Tribe shall have the authority to impose hunting, fishing, and wildlife rules and regulations on the Reservation that are stricter than those adopted by the State.

17.6 Riparian Rights. The littoral and riparian rights of the Catawba Indian Tribe in the Catawba River, or in any other streams or waters crossing their lands, shall not differ in any respect from the rights of other owners whose land abuts non-tidal bodies of water or non-tidal water courses in South Carolina. The

rights and obligations covered by this provision shall include but not be limited to: (i) the title to the river bed; (ii) the right to flood, pond, dam, and divert waters of the river or its tributaries; (iii) the right to build docks and piers in the river; (iv) the right to fish in the river or its tributaries; and (v) the right to discharge waste or withdraw water from the river or its tributaries. The Reservation is located on the Catawba River between two hydroelectric reservoirs licensed by the Federal Energy Regulatory Commission ("FERC"). The Tribe shall have the same rights and standing as all other riparian owners and users of the Catawba River to intervene in any proceeding or otherwise to contest or object to proposed actions or determinations of FERC or of any other governmental agency, commission, or court, whether federal, state, or local, with respect to the use of the Catawba River and its basin, including without limitation, withdrawal of water from the river; navigability on the river; and water power and hydroelectric usage of the river. Notwithstanding any other provisions of law effective now or hereafter adopted, the Tribe will have no special right or preferential standing greater than other riparian owners and users of the Catawba River to intervene in or contest any such agency action, determination, or proceeding, including specifically any actions or determinations by FERC regarding the licensing, use, or operation of the waters impounded by the existing reservoirs above and below the Reservation.

These qualifications shall apply to the existing reservation, to lands acquired for the expanded reservation, to any other lands acquired by or for the benefit of the Tribe, and to non-reservation lands.

17.7 Alcoholic Beverages. Alcohol shall be prohibited on the Reservation unless the Tribe adopts laws permitting the sale, possession, or consumption of alcohol on the Reservation. In such case, the Tribe shall adopt laws or ordinances that incorporate all state standards and regulations regarding hours, sales to minors, employment, consumption, possession, and standards for licensing; except, however, that the Tribe may impose stricter standards and regulations than those prescribed by state law. If beer, wine, and liquor are sold on the Reservation, licenses must be issued by the State in accordance with South Carolina law; and all beer, wine, and liquor taxes will be paid to the State in accordance with South Carolina law.

18. Taxation.

18.1 Indian Tribal Government Tax Status Act. The Indian Tribal Government Tax Status Act, 26 U.S.C § 7871, shall apply to the Tribe and its Reservation. In no event, however, may the Tribe pledge or hypothecate the income or principal of the Education or Social Services and Elderly Trust Funds or otherwise use them as security or a source of payment for bonds the Tribe may issue.

18.2 General Tax Liability. The Tribe, its members, the Tribal Trust Funds, and any other persons or entities affiliated with or owned by the Tribe, members of the Tribe, or the

Tribal Trust Funds, whether resident, located, or doing business on the Reservation or off the Reservation, shall be subject to all federal, state, and local income taxes, sales taxes, real and personal property taxes, excise taxes, estate taxes, and all other taxes, licenses, levies, and fees, except as expressly provided in this Agreement. Any other person or business entity which locates, operates, or does business on the Reservation shall be subject without exception to all federal, state, and local taxes, licenses, and fees, unless otherwise expressly provided in this Agreement. To the extent that the Tribe may be subject to any taxes under this section, the Tribe shall be taxed as if it were a business corporation incorporated under the laws of South Carolina unless otherwise expressly provided.

18.3 Bingo Taxes. If the Tribe elects to sponsor and conduct games of bingo under the provisions of Section 16 of this Agreement, the gross revenues generated by such bingo games will be subject to the 10% tax levy specified in Section 16 exclusively, and no other federal, state or local taxes shall apply to revenues generated by the bingo games which are received by the Tribe. If the Tribe elects to sponsor and conduct games of bingo under a regular license allowed nonprofit organizations under the Bingo Act, the Tribe will be taxed as a nonprofit corporation under the Bingo Act with respect to all revenues generated from the bingo games.

18.4 Income Taxes.

18.4.1 The Tribe and Tribal Trust Funds. Income of the Tribe, subdivisions and agencies of the Tribe, including entities owned by the Tribe or the Federal Government and the Tribal Trust Funds, and tax revenues collected by the Tribe by levy or assessment, shall be nontaxable for federal income tax purposes to the extent provided by federal law for recognized or restored Indian Tribes. Any tribal income and tax revenues which are nontaxable for federal income tax purposes because of the Tribe's status as a recognized or restored Indian Tribe shall also be nontaxable for purposes of any state and local taxes on income.

18.4.2 Members of Tribe. Members of the Tribe shall be liable for payment of federal, state and local income taxes to the same extent as any other person in the state, except that income earned by members of the Tribe for work performing governmental functions solely on the Reservation shall be exempt from state taxes during the period established by § 3.2 of this Agreement, and income earned by members of the Tribe from the sale of Catawba Indian pottery and artifacts, whether on or off the Reservation, which are made by members of the Tribe, shall be exempt from state, federal, and local income taxes. For purposes of federal income taxes, the income of members earned on the Reservation shall be taxable to the extent provided by federal law for members of recognized or restored Indian tribes. No funds distributed per capita pursuant to § 13.7 shall be subject at the time of distribution to federal, state or local income taxes; however, income subsequently earned on shares distributed to members

of the Tribe shall be subject to the same federal, state, and local income taxes as other persons in the state would pay. Compensation paid to Executive Committee members shall be subject to federal payroll taxes to the extent provided by Federal law for members of tribal councils of recognized or restored Indian tribes.

18.4.3 Taxation of Others on the Reservation. Any person or other entity which is not exempt from income taxes under § 18.4.1 or 18.4.2 shall be liable for all federal, state, and local income taxes otherwise due regardless of whether or not they are doing business on the Reservation.

18.5 Real Property Taxes.

18.5.1 Exemption of Tribal Real Property. All lands held in trust by the United States for the Tribe as part of the Reservation shall be exempt from all property taxes levied by the State or by any county and school district or special purpose district. All buildings, fixtures, and real property improvements owned by the Tribe or held in trust by the United States for the Tribe on the Reservation shall be exempt from all property taxes levied by the State or by any county and school district or special purpose district. If the Tribe owns a partial interest in property or a business, the property tax exemption provided in this section is applicable to the extent of the Tribe's interest.

18.5.2.1 Exemption of Members' Real Property. Single and multi-family residences, including mobile homes, that are situated on the Reservation shall be exempt from all property taxes levied by the State, or a county, a school district, or a special purpose district, if all of the following apply:

18.5.2.1.1 They are owned by the Tribe, members of the Tribe or Tribal Trust Funds, and

18.5.2.1.2 For single family residences, if they are occupied by members of the Tribe or the surviving spouse of a deceased member of the Tribe.

18.5.2.1.3 For multi-family residences, if:

18.5.2.1.3.1 If the property is valued on a per unit basis, those units which are occupied by a member of the Tribe or the surviving spouse of a deceased member or are unoccupied are exempt from property taxes. All other occupied units are subject to property taxes to the same extent that similar property is assessed and taxed elsewhere in the same jurisdiction. Occupancy is determined on the assesement date for the property;

18.5.2.1.3.2 If the property is not valued on a par unit basis, the property is exempt from property taxes based on the percentage of units which are occupied by a member of the Tribe or the surviving spouse of a deceased member of the Tribe, and the property is subject to property taxes to the same extent that similar property is assessed and taxed elsewhere in the same jurisdiction based on the parcentage of units not so occupied. In calculating the value, unoccupied units must not be considered. Occupancy is determined on the assessment date for the property.

18.5.2.1.4 Rental property constructed by the Tribe on the Reservation through an Indian Housing Authority which is financed by HUD is exempt from all property taxes. In lieu of the taxes, the authority may agree to make payments to the county or a political subdivision for improvements, services, and facilities furnished by the county or political subdivision for the benefit of the housing project. However, the payments may not exceed the estimated cost to the county or political subdivision of the improvements, services, or facilities furnished.

18.5.2.2 For purposes of this section, residential property shall be deemed owned by a member of the Tribe if the member or the surviving spouse of a member owns at least a one-half undivided interest in the property; and property shall be deemed occupied by members of the Tribe if at least one member or the surviving spouse of a member is living in the single-family residence or in each unit of any multi-family residence.

18.5.3 Taxation of Other Real Property. All buildings, fixtures, and real property improvements located on the Reservation which are not exempt from real property taxes under sections 18.5.1 or 18.5.2 shall be subject to all property taxes levied by the State, county, and any school district or special purpose to the same extent that similar buildings, fixtures, or improvements are assessed and taxed elsewhere in the same jurisdiction. However, the underlying land or leasehold in the land will not be subject to real property taxes. All buildings, fixtures, and improvements subject to real property taxes shall be eligible for any tax abatement or temporary exemption allowed new business investments to the same extent as similar properties qualify for exemption or abatement in the same county.

18.5.4 Tribal Property Taxes. The Tribe shall be authorized to levy taxes on buildings, fixtures, improvements, and personal property located on the Reservation, even though such properties may be exempt from property taxation by the state or its subdivisions, and may use such tax revenues for appropriate tribal purposes. The Tribe may also exempt or abate any such taxes. York and Lancaster Counties and the South Carolina Tax Commission will provide the necessary assistance to the Tribe if the Tribe chooses to assess tribal real property taxes as if they were property taxes imposed by a political subdivision.

18.5.5 Taxation of Non-Reservation Properties. Real property and improvements owned by the Tribe or by members of the Tribe or by both and not located on the Reservation shall be subject to all property taxes levied by the State and the county and by the school district and any special purpose districts or other political subdivisions where such property is located.

18.5.6 Fee in Lieu of Taxes on Non-reservation Property Held in Trust. All non-reservation real property held in trust by the Secretary shall be subject to the payment of a fee or fess in an amount equivalent to the real property tax that would have been paid to the applicable taxing authority had the property not been held in trust.

18.6 Personal Property Taxes.

18.6.1 Personal Property Owned by Tribe. All personal property owned by the Tribe during the period established by § 3.2 of this Agreement and used solely on the Reservation shall be exempt from personal property taxes. Except, however, motor vehicles owned by the Tribe during the period shall be exempt from personal property taxes even if used off the Reservation.

18.6.2 Personal Property Owned by Tribal Members. All personal property owned by members of the Tribe shall be subject to personal property taxes levied by the State and by the county, school district, special purpose district, and other subdivision of the State, where the property is deemed to be located.

18.6.3 Taxation of Other Personal Property. All personal property located on the Reservation which is not exempt from personal property taxes under § 18.6.1 shall be subject to personal property taxes levied by the State, county and any school or special purpose district encompassing the Reservation to the same extent that similar personal property is assessed and taxed elsewhere in the jurisdiction.

18.6.4 Determination of Ownership. For purposes of § 18.5.1 through 18.6.3, determination of whether the Tribe is the owner of property must be made in the same manner as for other taxpayers for South Carolina tax purposes.

18.7 Levy Against Property for Failure to Pay Property Taxes. Subject to perfected security interests, if a taxpayer subject to property taxes under §§ 18.5.1 through 18.6.3 fails to pay the taxes owed, the appropriate taxing authority shall have the power to levy against any personal property subject to personal property taxes owned by the taxpayer within the county whether on or off the Reservation in order to satisfy the taxes due.

18.7.1 If this levy against the personal property is not sufficient to satisfy the tax lien, the county or other political subdivision may contact the State, and the State shall levy against other taxable property of the taxpayer in the State and remit any proceeds to the county or appropriate taxing authority which is owed the tax.

18.7.2 If the county or other political subdivision cannot satisfy its lien, the county may require the Tribe to cease allowing the taxpayer to do business on the Reservation.

18.7.3 If the taxpayer is in bankruptcy, the bankruptcy statutes shall apply to this Section.

18.7.4 The State or any political subdivision may not seize real property located on the Reservation.

18.8 Vehicle License Fees. The Tribe and its members shall be subject to all license and registration fees and requirements, all periodic inspection fees and requirements, and all fuel taxes imposed by federal, state, and local governments on motor vehicles, boats, and airplanes, and other means of conveyance.

18.9 Sales and Use Taxes. The Tribe, its members, and the Tribal Trust Funds shall be liable for the payment of all

state and local sales and use taxes to the same extent as any other person or entity in the state, except as specifically provided below.

18.9.1 Tribal Purchases Exemption. Purchases made by the Tribe for tribal government functions during the period established by § 3.2 of this Agreement shall be exempt from state and local sales and use taxes.

18.9.2 Catawba Pottery Exemption. Catawba pottery and artifacts made by members of the Tribe and sold on or off the Reservation by the Tribe or members of the Tribe shall be exempt from state and local sales and use tax.

18.9.3 Tribal Sales Tax. During the period established by § 3.2 of this Agreement, the sale on the Reservation of all other items, whether made on or off the Reservation, shall be exempt from state and local sales and use taxes, but shall be subject to a special tribal sales tax levied by the Tribal Council equal to the state and any local sales tax that would be levied in the jurisdiction encompassing the Reservation but for this exemption. The South Carolina sales and use tax laws, regulations, and rulings shall apply to the special tribal sales tax, and the special tribal sales tax will be administered and collected by the South Carolina Tax Commission. The South Carolina Tax Commission will separately account for the special tribal sale tax, and the State Treasurer will remit the special tribal sales tax revenues periodically to the Tribe at no cost to the Tribe. The tribal sales tax shall not apply to retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are $100 or less. In such case, the State sale tax shall apply. The Tribe shall impose a tribal Use tax on the storage, use or other consumption on the Reservation of tangible personal property purchased at retail outside the State when the vendor does not collect the tax. However, any use taxes which are collected by a vendor which is not located in the state will be subject to state use taxes and the use tax will be remitted to the state and not the Tribe. Any use taxes not collected by the vendor and remitted to the state will be subject to the Tribal use tax and must be collected directly by the Tribe.

18.10 Payments in Lieu of Taxes. The Tribe shall pay a fee in lieu of school taxes. That fee shall be determined by the county in the same manner and shall be the same amount that is paid by students from outside the county entering schools in the county. The fee payable by the Tribe shall be reduced by any funds received by the government for Impact Aid under 20 U.S.C. 236 et seq. or any other federal funds designed to compensate school districts for loss of revenue due to the non-taxability of Indian property. Any fee paid on behalf of a child under this section will be excluded from federal and state income of the child or his family for federal and state income tax purposes.

18.11 Estate Taxes. Members of the Tribe shall be liable for payment for all estate and inheritance taxes, except, however, that the undistributed share of any member in the trust

fund established pursuant to § 13.7 shall be exempt from federal and state estate and inheritance taxes.

18.12 Eligibility for Consideration to Become an Enterprise Zone or General Purpose Foreign Trade Zones. Notwithstanding the provisions of any other law or regulation, the Tribe shall be eligible to become, sponsor and operate (1) an "enterprise zone" pursuant to title VII of the Housing and Community Development Act of 1987 (42 U.S.C. 11501-11505) or any other applicable Federal (or State) laws or regulations; or (2) a "foreign-trade zone" or "subzone" pursuant to the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u) and the regulations thereunder, to the same extent as other federally recognized Indian Tribes.

18.13 Indian Tribal Government Tax Status Act. The Indian Tribal Government Tax Status Act, 26 U.S.C. § 7871, applies to the Tribe and its Reservation for South Carolina income tax purposes to the same extent as provided in the Federal Implementing legislation.

19. General Provisions.

19.1 General Applicability of State Law. Except as expressly otherwise provided in the implementing legislation, the Tribe and its members, any lands or natural resources owned by the Tribe, and any land or natural resources held in trust by the United States or by any other person or entity for the Tribe, shall be subject to the laws of the State and the civil, criminal and regulatory jurisdiction of the State, to the same extent as any other person or land in the State.

19.2 Nonadmissibility. This Agreement represents the compromise settlement of the Tribe's claim, and no term, condition, part, or provision of this Agreement shall be deemed an admission of liability on the part of any of the parties to this Agreement or the holder of property in the claim area in any pending or future suit in connection with the Tribe's claim.

19.3 Impact of Subsequently Enacted Laws. The provisions of any Federal law enacted after the date of enactment of the Federal law implementing this Agreement shall not apply in the State if such provision would materially affect or preempt the application of the laws of the State, including application of the laws of State to lands owned by or held in trust for Indians, or Indian Nations, tribes or bands of Indians. However, such federal law shall apply within the State if the State grants its approval by a law or joint resolution enacted by the General Assembly of South Carolina and signed by the Governor.

19.4 Severability. The implementing legislation shall provide that if the provisions of Sections 4, 5 or 6 of this Agreement, once incorporated into the implementing legislation, are held invalid, then all of the implementing legislation is invalid. Should any other section of this Agreement be held invalid once incorporated into the implementing legislation, the remaining sections of the implementing legislation shall remain in full force and effect.

19.5 <u>Subsequent Amendments to the State Act or Settlement Agreement</u>. The Federal Implementing legislation shall give the United States' consent to the Tribe and the State to amend the Settlement Agreement and/or the State Act, provided that consent to such amendment is given by both the State and the Tribe, and that such amendment relates to:

(1) the jurisdiction, enforcement, or application of civil, criminal, regulatory, or tax laws of the Tribe and the State;

(2) the allocation or determination of governmental responsibility of the State and the Tribe over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the Tribe;

(3) the allocation of jurisdiction between the Tribal courts and the State courts; or

(4) technical and other corrections and revisions to conform the State Act and the Agreement in Principle attached to the State Act to the Settlement Agreement incorporated by reference in this act.

19.6 <u>Effective Date of State Act</u>. The State implementing legislation shall provide that the act will take effect when the Governor certifies that the Counties of York and Lancaster have taken all actions required of them by the Settlement Agreement. However, the Governor may not make the certification until the Congress of the United States has passed and the President of the United States has signed into law Federal Implementing legislation which he also certifies as consistent with the Settlement Agreement.

INTRODUCED
April 29, 1993

S. 695

Introduced by SENATORS Hayes, Gregory, Peeler, Short, J. Verne Smith and Drummond

S. Printed 4/29/93--H.
Read the first time April 29, 1993.

STATEMENT OF ESTIMATED FISCAL IMPACT

1. Estimated Cost to State-First Year $see below
2. Estimated Cost to State-Annually Thereafter $see below

Senate Bill 695 is a Joint Resolution that provides for payment of the Catawba Indian Land Settlement Claim. The bill provides for transfer from the Insurance Reserve Fund of $12.5 million to the General Fund of the State. This transfer would take place during the current fiscal year and must be held by the State Treasurer in a special account to be paid out in five annual installments to the Secretary of the United States Department of the Interior. Interest on the money held in the special account is to be credited to the General Fund. After final payment of the claim, a total of five payments of $2.5 million must be transferred from the General Fund to the Insurance Reserve Fund.

The primary impact to the Insurance Reserve Fund would be approximately $3,125,000 ($12.5 million x 5% x 5 years). An additional $1.2 million - $1.6 million in interest loss would be realized by the Insurance Reserve Fund during payback, depending on the payback schedule. According to Insurance Reserve Fund officials, this loss of interest could be significant enough to cause insurance premium adjustments to all who participate in the Insurance Reserve Fund which includes state agencies, school districts, and local governments until such

payments are made to the Insurance Reserve Fund. Further, the earnings on interest to the General Fund would not equal to the loss to the Insurance Reserve Fund because of the payout schedule and the potential for pooled investments.

This is a preliminary impact estimate. The Insurance Reserve Fund actuary is in the process of determining actual impact on the premium structure.

Prepared By:
K. Earle Powell
State Budget Analyst

Approved By:
George N. Dorn, Jr.
State Budget Division

A JOINT RESOLUTION

TO PROVIDE FOR PAYMENT OF THE CATAWBA INDIAN LAND SETTLEMENT CLAIM.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. There is transferred from the Insurance Reserve Fund two and one-half million dollars to the General Fund of the State for the current fiscal year which must be held by the State Treasurer in a special account and paid to the Secretary of the United States Department of the Interior for a portion of the settlement of the Catawba Indian Land Claim. Interest earned on monies held in the special account is credited to the Insurance Reserve Fund. Each fiscal year for a total of five years beginning after the payment provided in this section, five hundred thousand dollars plus interest must be transferred from the general fund to the Insurance Reserve Fund. The interest paid to the Insurance Reserve Fund must be charged from the date of the payment provided in this section at a rate determined by the State Treasurer.

SECTION 2. This act takes effect upon approval by the Governor.

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[6095]

AMENDED
June 2, 1993

S. 608

Introduced by SENATORS Hayes, Gregory, Peeler and Short

S. Printed 6/2/93--H.
Read the first time April 28, 1993.

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 16 TO TITLE 27 SO AS TO IMPLEMENT THE SETTLEMENT OF CATAWBA INDIAN LAND AND OTHER CLAIMS IN SOUTH CAROLINA.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 27 of the 1976 Code is amended by adding:

"CHAPTER 16

The Catawba Indian Claims Settlement Act

Section 27-16-10. This chapter is known as 'The Catawba Indian Claims Settlement Act'.

Section 27-16-20. The Legislature finds:

(1) The Catawba Indian Tribe has filed lawsuits in both the United States District Court for the District of South Carolina, claiming possessory rights to certain lands in South Carolina and trespass damages and in the United States Court of Federal Claims seeking monetary damages against the United States.

(2) The pendency of these lawsuits has resulted in severe economic and social hardships for large numbers of landowners, citizens, and communities in the State, and therefore for the State as a whole. If these claims are not resolved, further litigation involving tens of thousands of landowners would be likely.

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(3) The Indian claimants and the State, acting through the Governor, have reached an agreement in principle to settle their differences which constitutes a good faith effort on the part of all parties to achieve a fair and just resolution of claims which, in the absence of this settlement, could be pursued through the courts for many years to the detriment of the State and all its citizens, including the Indians.

(4) The implementation of the settlement requires legislation by the Congress of the United States and by the General Assembly of South Carolina.

Section 27-16-30. As used in this chapter:

(1) 'Catawba Claim Area' means that area of approximately one hundred forty-four thousand acres in York, Lancaster, and Chester Counties claimed by the Catawba Tribe under the Treaty of Pine Tree Hill in 1760 and the Treaty of Augusta in 1763, and surveyed by Samuel Wylie in 1764, and ceded by the Catawba Indian Tribe to South Carolina by the Treaty of Nation Ford in 1840.

(2) 'Catawba Indian Tribe,' 'Catawbas,' or 'Tribe' means the Catawba Indian Tribe of South Carolina as constituted in aboriginal times, which was party to the Treaty of Pine Tree Hill in 1760 as confirmed by the Treaty of Augusta in 1763, which was party also to the Treaty of Nation Ford in 1840, and which was the subject of the Catawba Indian Tribe of South Carolina Division of Assets Act, enacted September 29, 1959, codified at 25 U.S.C. Sections 931-938, and all predecessors and successors in interest, including the Catawba Indian Tribe of South Carolina, Inc.

(3) 'Claim' or 'Claims' means a claim which was asserted by the plaintiffs in either suit, and any other claim which could have been asserted by the Catawba Indian Tribe or a Catawba Indian of a right, title, or interest in property, to trespass or property damages, or of a hunting, fishing, or other right to natural resources, if the claim is based upon aboriginal title, recognized title, or title by grant, patent, or treaty, including the

Treaty of Pine Tree Hill of 1760, the Treaty of Augusta of 1763, or the Treaty of Nation Ford of 1840.

(4) 'Executive Committee' means the body of the Catawba Indian Tribe of South Carolina composed of the Tribe's executive officers as selected by the Tribe in accordance with its constitution.

(5) 'Existing Reservation' means that tract of approximately six hundred thirty acres conveyed to the State in trust for the Tribe by J.M. Doby on December 24, 1842, by deed recorded in York County Deed Book N, pages 340-341.

(6) 'Federal implementing legislation' means all appropriate federal legislation necessary to enact and effect the terms, provisions, and conditions of the Settlement Agreement.

(7) 'General Council' means the membership of the Tribe convened as the Tribe's governing body for the purpose of conducting tribal business pursuant to the Tribe's constitution.

(8) 'Internal Matters' or 'Internal Tribal Matters' are matters which include, but are not limited to, the relationship between the Tribe and one or more of its members, the conduct of Tribal government over members of the Tribe, or the Tribe's exercise of the power to exclude individuals from its Reservation.

(9) 'Member' means individuals who are members of the Tribe as determined in accordance with the federal implementing legislation.

(10) 'Reservation' or 'expanded reservation' means the existing reservation and lands added to the Existing Reservation pursuant to the federal implementing legislation which will be held in trust by the Secretary.

(11) 'Secretary of the Interior' or 'Secretary' means the Secretary of the Department of the Interior or his designee, and 'Department' or 'Department of the Interior' refers to the United States Department of the Interior.

(12) 'Settlement Agreement' means the written 'Agreement in Principle' reached between the State and the Tribe and attached to the copy of the act

enacting this chapter signed by the Governor and filed with the Secretary of State.

(13) 'State Government' or 'State' means South Carolina.

(14) 'Suit' or 'suits' means Catawba Indian Tribe of South Carolina v. State of South Carolina, et al., docketed as Civil Action No. 80-2050 and filed in United States District Court for the District of South Carolina; and Catawba Indian Tribe of South Carolina v. The United States of America, docketed as Civil Action No. 90-553L and filed with the United States Court of Federal Claims.

(15) 'Termination Act' means the 'Catawba Indian Tribe Division of Assets Act,' enacted September 21, 1959, 73 Stat. 592, 25 U.S.C. Section 931-938.

(16) 'Transfer' includes, but is not limited to, a voluntary or an involuntary sale, grant, lease, allotment, partition, or other conveyance; a transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and an act, an event, or a circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources.

(17) 'Tribal Trust Funds' means those funds set aside in trusts established by the Secretary for the benefit of the Tribe and its members pursuant to the federal legislation implementing the Settlement Agreement.

Section 27-16-40. The Catawba Tribe, its members, lands, natural resources, or other property owned by the Tribe or its members, including land, natural resources, or other property held in trust by the United States or by any other person or entity for the Tribe, is subject to the civil, criminal, and regulatory jurisdiction of the State, its agencies, and political subdivisions other than municipalities, and the civil and criminal jurisdiction of the courts of the State to the same extent as any other person, citizen, or land in the State, except as

otherwise expressly provided in this chapter or in the federal implementing legislation.

Section 27-16-50. (A) The General Assembly recognizes and acknowledges that the Settlement Agreement requires payment to the Catawba Indian Tribe of fifty million dollars of which thirty-two million dollars is to be contributed by the federal government. The State shall contribute twelve million, five hundred thousand dollars toward the settlement, which must be paid in five annual payments in the amount of two million, five hundred thousand dollars. The State's initial annual payment must be made within ninety days after the effective date of the implementing legislation, and the State's annual payments continue on the same day and month for four consecutive years, or at the option of the State, the remaining balance of the contribution may be paid in full at any time within five years of the effective date of this chapter.

(B) The State Treasurer shall collect all local and private contributions to settlement and forward them to the Secretary.

(C) Upon completion of all payments into the Trust Funds created by the federal implementing legislation and the Settlement Agreement, at least one-third of all state, local, and private contributions must be paid into the Education Trust Fund.

(D) Private payments made pursuant to Section 5.2 of the Settlement Agreement may be treated at the election of the taxpayer as either a payment in settlement of litigation or a charitable contribution for state income tax purposes.

(E) If the State's contribution of twelve million, five hundred thousand dollars, or any part of it, is not paid as scheduled, the Tribe, or the United States on behalf of the Tribe, has a cause of action against the State for the amount not paid when due. Suit on this cause of action may be brought, at the election of the Tribe, in the Court of Common Pleas of South Carolina or in the United States District Court for the District of South Carolina. Until the entire twelve million, five

hundred thousand dollars is paid, the State waives any Eleventh Amendment immunity which may bar a suit in the United States District Court for the District of South Carolina, but this waiver applies only to the cause of action referred to in this subsection.

(F) None of the funds, assets, or income from the Tribal Trust funds may at any time be used as a basis for denying or reducing funds to the Tribe or its members under federal, state, or state funded local program, and distributions from the Tribal Trust Funds may be used as matching funds for other state, local, or federal grants or loans.

Section 27-16-60. (A) Any transfer of land or other natural resources located anywhere within the State, from, by, or on behalf of the Tribe including, but without limitation, a transfer pursuant to a treaty, compact, or statute of any state, is deemed to have been made in accordance with the laws of the State.

(B) Any transfer of land or other natural resources located anywhere within the State from, by, or on behalf of a member of the Tribe or a person purporting to be a member of the Tribe including, but without limitation, a transfer pursuant to a treaty, compact, or statute of a state, is deemed to have been made in accordance with the laws of the State.

(C) By virtue of the approval and ratification of any transfer of land or natural resources affected by this section, all claims under a statute or the common law of a state against the United States, a state or subdivision of the United States, or another person or entity, by the Tribe, any of its members or any person purporting to be a member, or any predecessors or successors in interest thereof, arising at the time of or subsequent to the transfer and based on any interest in or right involving the land or natural resources, including without limitation claims for trespass damages, claims for use and occupancy, or claims for damages to property, are deemed extinguished as of the date of the transfer.

(D) Nothing in this section affects, diminishes, or eliminates the personal claim of an individual Indian which is pursued under a law of general applicability that protects non-Indians as well as Indians.

Section 27-16-70. (A) Except as provided in this section, South Carolina shall exercise exclusive jurisdiction over all crimes under the statutory or common law of this State.

(B) A constitution adopted by the Tribe may provide for a tribal court with criminal jurisdiction.

(1) If a tribal court with criminal jurisdiction is created, the territorial jurisdiction of the court both original and appellate must be limited to the Reservation; the jurisdiction of the court over persons must be limited to members of the Tribe; and the subject matter jurisdiction of the court is limited to crimes within the jurisdiction of the state magistrates' courts and to any additional misdemeanors and petty offenses specified in the ordinances or laws adopted by the Tribe. The fines and penalties for the offenses may not exceed the maximum fines and penalties that a state magistrate's court may impose.

(2) In all cases in which the tribal court has jurisdiction over state law, its jurisdiction must be concurrent with the jurisdiction of the magistrates' courts of the State; and defendants shall have the right to remove the cases to the magistrate's court or appeal their convictions in tribal court cases to the General Sessions Court, in the same manner that magistrate's court decisions may be appealed, or in accordance with procedures the General Assembly may provide. In cases where the tribal court is applying those additional ordinances or laws described in item (1), it shall have-exclusive jurisdiction.

(C) For the purpose of enforcing the Tribe's powers provided by this chapter and the federal implementing legislation, the Tribe may employ peace officers.

(1) If the Tribe elects to employ peace officers, all tribal peace officers shall undergo and pass the same course of training required of sheriff's deputies by South Carolina.

(2) The State, the Counties of York and Lancaster, and the Tribe shall enter into a cross-deputization agreement whereby tribal law enforcement officers are authorized to enforce state, county, and tribal law within the Reservation against members and nonmembers of the Tribe, and state and county law enforcement officers are authorized to enforce state, county, and tribal law within the Reservation against members and nonmembers of the Tribe. However, if the reservation is located in only one of the two counties, only the sheriff of that county shall enter into a cross deputization agreement as provided in this section.

Section 27-16-80. (A) The Tribe may provide in its constitution for a Tribal Court having civil jurisdiction which may extend up to, but not exceed, the extent provided in this chapter and the federal implementing legislation. The Tribe may have a court of original jurisdiction, as well as an appellate court.

(1) With respect to actions on contracts, the Tribal Court may be vested with jurisdiction over an action on a contract:

(a) to which the Tribe or a member of the Tribe is a party, which expressly provides in writing that the Tribal Court has concurrent or exclusive jurisdiction.

(b) between the Tribe or a member of the Tribe and other parties or their agents who are physically present on the Reservation when the contract is made, and which is to be performed in part on the Reservation so long as the contract does not expressly exclude jurisdiction of the Tribal Court. For purposes of this section, the delivery of goods or the solicitation of business on the Reservation does not constitute part performance sufficient to confer jurisdiction.

(c) to which the Tribe or a member of the Tribe is a party where more than fifty percent of the services to be rendered are performed on the Reservation, so long as the contract does not expressly exclude jurisdiction of the Tribal Court.

(2) With respect to actions in tort, the Tribal Court may be vested with jurisdiction over an action arising out of:

(a) an intentional tort, as defined by South Carolina law, committed on the Reservation, in which recovery is sought for bodily injuries or damages to tangible property located on the Reservation.

(b) negligent tortious conduct occurring on the Reservation or conduct occurring on the Reservation for which strict liability may be imposed, excluding, however, accidents occurring within the right-of-way limits of a highway, road, or other public easement owned or maintained by the State or its subdivisions or by the United States, which abuts or crosses the Reservation. However, the action in tort involving a nonmember of the Tribe as defendant may be removed to a state or federal court of appropriate jurisdiction if the amount in controversy exceeds the jurisdictional limits then applicable to magistrate's court in South Carolina.

(3) The Tribal Court may be vested with exclusive jurisdiction over internal matters of the Tribe.

(4) The Tribal Court also may be vested with jurisdiction over domestic relations where both spouses to the marriage are members of the Tribe and both reside on the Reservation or last resided together on the Reservation before the separation leading to their divorce.

(5) The Tribal Court also may be vested with jurisdiction to enforce against a business located on the Reservation and members or nonmembers residing on the Reservation, tribal civil regulations regulating conduct on the Reservation enacted pursuant to Section 10.2 or 17 of the Settlement Agreement. The entity or person is charged with notice of the Tribe's regulations

governing conduct on the Reservation and is subject to the enforcement of the regulations in the Tribal Court unless the Tribe specifically has exempted the entity or person from any or all regulation or enforcement in Tribal Court.

(B) The original jurisdiction of the Tribal Court over the matters set forth in subsections (A)(1)(b), (A)(1)(c), (A)(2), and (A)(4) must be concurrent with the jurisdiction of the Court of Common Pleas of South Carolina, the Family Court, and the United States District Court for South Carolina. The original jurisdiction of the Tribal Court over the matters set forth in subsection (A)(1)(a) must be concurrent or exclusive depending upon the agreement of the parties. The original jurisdiction of the Tribal Court over matters set forth in subsection (A)(3) must be exclusive. The original jurisdiction of the Tribal Court over matters set forth in subsection (A)(5) must be exclusive unless the Tribe has waived exclusive jurisdiction as to any person or entity. As to all sections referred to in this subsection, jurisdiction over appeals, if any, must be governed by subsection (D).

(C) The Tribe may waive Tribal Court jurisdiction or the application of tribal laws with respect to a person or firm residing, doing business, or otherwise entering upon the Reservation or contracting with the Tribe. A member of the Tribe also may waive Tribal Court jurisdiction or specify in the contract the law of an appropriate jurisdiction to govern a commercial transaction or the interpretation of a contract to which the member is a party.

(D) (1) All final judgments entered in actions tried in Tribal Court are subject to an appeal to the Family Court, the Court of Common Pleas, or the United States District Court, depending upon whether that court would have had jurisdiction over the appealed matter had it been commenced in that court, if all of the following circumstances exist:

(a) A party to the suit is not a member of the Tribe;

(b) The amount in controversy or the cost of complying with an equitable order or decree exceeds the jurisdictional limits then applicable in the magistrates' courts of South Carolina;

(c) The subject matter of the suit does not fall within subsection (A)(1)(a) if jurisdiction is exclusive or subsection (A)(3) or (A)(5). The Tribe may enlarge the right of appeal to include other subject matters and members of the Tribe, subject to rules and procedures the applicable court and relevant state laws may provide.

(2) In an appeal, the court, as appropriate, may:

(a) enter judgment affirming the Tribal Court;

(b) dismiss the case for lack of jurisdiction of the Tribal Court, but only in those cases where the Tribal Court first has addressed the issue of its jurisdiction;

(c) reverse or remand the case for retrial or reconsideration in Tribal Court; or

(d) grant a trial de novo in its court.

(3) In an appeal, a trial, or a trial de novo, the reviewing court shall apply any regulation enacted pursuant to tribal authority.

(E) (1) In cases subject to subsection (A)(2) or (D), all final judgments of the Tribal Court must be given full faith and credit in the state court with appropriate jurisdiction, and the Tribal Court shall grant full faith and credit to state court final judgments.

(2) In those cases which are not subject to subsection (A)(2) or (D), the judgment must be reviewed by the state court in the manner provided in the Uniform Arbitration Act, Section 15-48-10 et.seq. or, if appropriate, by the federal court in the manner provided in the United States Arbitration Act, 9 U.S.C. 1 et. seq.

(F) (1) The Tribe may sue or be sued, in a court of competent jurisdiction. However, the Tribe enjoys sovereign immunity including damage limits and, except as provided in this subsection, immunity from seizure, execution, or encumbrance of properties, to the same extent as the political

subdivisions of the State as provided in the South Carolina Tort Claims Act, Chapter 78 of Title 15. With respect to nonconsumer liability based on contract, however, the Tribe, in a written contract, may provide that it is immune from suit on that contract as if there had been no waiver of sovereign immunity.

(2) Notwithstanding the provisions of this subsection, the Tribe is subject to suit as provided in Section 27-16-120(B).

(3) The Tribe shall procure and maintain liability insurance with the same coverage and limits as required of political subdivisions of the State by Section 15-78-140(b).

(4) An action alleging tortious conduct by an employee of the Tribe acting within the scope of his duties which seeks money damages against the Tribe must name only the Tribe as a party defendant.

(5) A settlement or judgment in an action or a settlement of a claim filed with the Tribe constitutes a complete bar to further action by the claimant against the Tribe by reason of the same occurrence.

(6) A claimant may file a verified claim for damages with the Tribe before filing suit but is not required to file the claim as a prerequisite to filing suit.

(a) The claim must set forth the circumstances which brought about the loss, the extent of the loss, the time and the place the loss occurred, the names of all witnesses, if known, and the amount of the loss sustained.

(b) The Tribe shall designate an employee or office to accept the filing of claims. Filing may be accomplished by receipt by the Tribe's designee of certified mailing of the claims or by compliance with the provisions of law relating to service of process.

(c) If filed, the claim must be received within one year after the loss was or should have been discovered.

(d) The Tribe has one hundred eighty days from the date of the filing of the claim in which

to determine whether the claim is allowed or disallowed. Failure to notify the claimant of action upon the claim within one hundred eighty days after the filing of the claim is considered a disallowance of the claim.

(e) While the filing of the claim is not required as a prerequisite to suit, if a claimant files a claim, he may not institute an action until after the occurrence of the earliest of one of the following three events:

(i) passage of one hundred eighty days from the filing of the claim with the Tribe;

(ii) Tribe's disallowance of the claim;

(iii) Tribe's rejection of a settlement offer.

(7) The provisions of the following sections of the South Carolina Tort Claims Act apply to the Tribe to the same extent as they apply to the State and its political subdivisions:

(a) Section 15-78-100(c), joint tortfeasors;

(b) Section 15-78-110, statute of limitations;

(c) Section 15-78-170, survival actions;

(d) Section 15-78-190, applicability of uninsured or underinsured defendant insurance.

(8) If the Tribe's insurance coverage is inadequate or unavailable to satisfy a judgment within the limits of the Tort Claims Act, neither the judgment nor any other process may be levied upon the corpus or principal of the Tribal Trust Funds or upon property held in trust for the Tribe by the United States. However, the Tribe or the Secretary of Interior shall honor valid orders of a federal or state court which enters money judgments for causes of action against the Tribe arising after the effective date of this chapter, by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment or payments of income from the Tribal Trust Funds.

(G) The Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., applies to Catawba Indian Children as set forth in the federal implementing legislation.

(H) If no Tribal Court is established by the Tribe, the State shall exercise jurisdiction over all civil and criminal causes arising out of acts and transactions occurring on the Reservation or involving members of the Tribe. If the Tribe does establish a Tribal Court pursuant to Section 27-16-70(B) or 27-16-80(A), Section 27-16-70(B)(2) or 27-16-80 (B) governs whether jurisdiction is exclusive or concurrent.

Section 27-16-90. (A) The State, after obtaining any necessary judicial approval, may convey the Existing Reservation to the United States of America.

(B) An Expanded Reservation shall be created in the manner prescribed by the federal implementing legislation and the Settlement Agreement. This Expanded Reservation must be joined with the Existing Reservation to form the new tribal Reservation.

(1) (a) The total area of the Reservation is limited to three thousand acres, including the Existing Reservation, but the Tribe may exclude from this limit up to six hundred acres of additional land if the land is:

(i) within rights-of-way for public roads or public utilities rendered unusable for development by the easement or right-of-way;

(ii) within the one hundred-year flood plain of the Catawba River as defined by the Federal Emergency Management Agency, or its successor;

(iii) nondevelopable wetland defined or restricted by law or regulation so that buildings, structures, and other improvements are prohibited;

(iv) park or recreational land accessible to the public and dedicated permanently to public use.

(b) After completion of a comprehensive development plan the Tribe may seek to have the permissible area of the Expanded Reservation enlarged to a maximum of three thousand, six hundred acres, plus up to six hundred acres of land as described in subitem (a). Expansion must be

approved first, however, by the Secretary and then by ordinance of the county council governing the area where the additional lands are to be acquired and by a law or joint resolution enacted by the General Assembly and signed by the Governor of South Carolina.

(2) Before placing a noncontiguous tract in Reservation status, the Tribe, in consultation with the Secretary, shall submit to the county council in a county where it proposes to purchase noncontiguous tracts for Reservation status a Noncontiguous Development Plan Application. As used in this item 'application' is as described in the Settlement Agreement.

(3) The Tribe shall present its application to the county council of each county in which the Secretary proposes to purchase noncontiguous tracts to be placed in Reservation status. The county council shall make findings on the extent to which the application has met the criteria set forth in the Settlement Agreement and recommend to the Governor whether or not the application should be approved. After receiving the county council's recommendation, the Tribe may modify its application and resubmit it to the county council or present it to the Governor for approval. Giving due deference to the recommendation of the county council, the Governor shall review the application and decide whether to approve or disapprove it on the basis of the criteria set forth in the Settlement Agreement. Neither the county council's approval nor the Governor's approval may be withheld unreasonably. The Governor's final action must be accompanied by a written statement of reasons and is reviewable under the laws of the State.

(4) Upon approval by the Governor of the Tribe's Application, the Secretary, in consultation with the Tribe, may proceed to place noncontiguous tracts in Reservation status in accordance with the application, this chapter, and the terms of the Settlement Agreement.

(C) The Secretary and the Tribe shall endeavor at the outset to acquire contiguous tracts for the

expanded Reservation in the area referred to in the Settlement Agreement as the 'Primary Expansion Zone'. The Primary Expansion Zone lies within the area bounded by S. C. Highway No. 5 on the south running northwesterly to its intersection with Springdale Road on the west and northeasterly to the Catawba River along Sturgis Road; east along the Catawba River to its confluence with Sugar Creek; north along Sugar Creek to its intersection with S. C. Highway No. S-29-41, Doby Bridge Road; with S. C. Highway S-29-41 to its intersection with U.S. Highway No. 521; with U.S. Highway No. 521 in a southerly direction to its intersection with S. C. Highway No. S-29-55, Van Wyck Road, on the east; with S. C. Highway No. S-29-55 to its intersection with Twelve Mile Creek on the south; and with Twelve Mile Creek to S. C. Highway No. 5 on the south. This area is known as the 'Catawba Reservation Primary Expansion Zone.'

(D) The Secretary, in consultation with the Tribe, may elect to purchase contiguous tracts in an alternative area described in the Settlement Agreement as the Secondary Expansion Zone, under the conditions provided in subsections (B)(2) and (3). The Secondary Expansion Zone consists of the area bounded by Sugar Creek on the west; the Catawba River on the south extending to the Norfolk Southern Railway trestle on the west; northerly with the railroad right-of-way to its intersection with S.C. S-46-329, Brickyard Road; east to S.C. S-46-41, Doby Bridge Road; easterly along S.C. S-46-41 to its intersection with Sugar Creek. This area is known as the 'Catawba Reservation Secondary Expansion Zone'.

(E) The Primary and Secondary Expansion Zones in subsections (C) and (D) are the preferred and only approved zones for expansion of the Reservation. However, after completing a comprehensive plan of development, the Tribe may propose different or additional expansion zones. The zone first must be approved by the Secretary, then by ordinance of the county council where the zone is located, and by law or joint resolution enacted by the General Assembly of South Carolina and signed by the

Governor. The combined area of all land acquisitions, including land in specially approved zones, may not exceed the limits imposed by this section.

(F) Before the Tribe's comprehensive planning process, the South Carolina Department of Highways and Public Transportation shall consult with the Tribe about planned and proposed major highways within the Primary and Secondary Expansion Zones in the manner described in the Settlement Agreement.

(G) Before the Tribe's comprehensive planning process, the South Carolina Department of Health and Environmental Control shall consult with the Tribe about the location of future sewage treatment facilities that may serve the Primary and Secondary Expansion Zones in the manner described in the Settlement Agreement. The Tribe is responsible for the design, construction, operation, and maintenance of its own sewage collection system and for the cost of constructing an extension line and tap to the transmission line. The Tribe also is subject to fees for use of the treatment system and transmission line and subject to all regulations imposed on users of the system. The Department of Health and Environmental Control shall endeavor to ensure that the fees, charges, and rules are the same as those applied to municipal users of the system. If the Tribe is required to construct an extension line to connect with a transmission line, the Tribe may charge non-Reservation users along the extension line reasonable tap and user fees.

(H) Except as provided in this subsection, the power of eminent domain must not be used by a governmental authority in acquiring parcels of land for the benefit of the Tribe, whether or not the parcels are to be part of the Reservation. All purchases may be made only from willing sellers by voluntary conveyances, except if the ostensible owner agrees to the sale, the Secretary may use condemnation proceedings to perfect or clear title and to acquire any interests of putative defendants whose addresses are unknown or the interests of unborn heirs or persons subject to mental disability. For South Carolina income tax

purposes, the conveyance must be treated in the manner provided by Internal Revenue Code Section 1033 if the federal implementing legislation provides for that treatment under federal law. Filing and recording fees, all documentary tax stamps, and other fees incident to the conveyance of real estate are payable in connection with the purchases regardless of whether the property is purchased by the Tribe or by the United States in trust for the Tribe. Real property taxes levied for the year of closing must be prorated and paid at closing, or if the amount of property taxes to be due then cannot be calculated, property taxes must be estimated and escrowed at closing.

(I) The purchase of land specially assessed as agricultural use property by York or Lancaster County shall not result in a rollback of property taxes if the property is placed by the Tribe in Reservation status within one year of the date of purchase. If specially assessed land is acquired and not made part of the Reservation within one year, deferred or rollback taxes are due and payable without interest to the county treasurer.

(J) The acquisition of lands for the expanded Reservation may not extinguish easements or rights-of-way then encumbering the lands unless the Secretary or the Tribe enters into a written agreement with the owners terminating the easements or rights-of-way. The Secretary, with the approval of the Tribe, has the power to grant or convey easements and rights-of-way for public roads, public utilities, and other public purposes over the Reservation. Unless the Tribe and the State agree upon a valuation formula for pricing easements over the Reservation, the Secretary is subject to proceedings for condemnation and eminent domain to acquire easements and rights-of-way for public purposes through the Reservation under the laws of South Carolina in circumstances where no other reasonable access is available. With the approval of the Tribe, the Secretary also may grant easements or rights-of-way over the Reservation for private purposes, and implied easements of

necessity apply to all lands acquired by the Tribe, unless expressly excluded by the parties.

(K) Only land made part of the Reservation is governed by the special jurisdictional provisions set forth in this chapter and in the federal implementing legislation.

Section 27-16-100. (A) The Tribe may acquire parcels of real estate outside the Reservation in the manner provided by the federal implementing legislation and the Settlement Agreement. These parcels must not be part of the Reservation, governed by the special jurisdictional provisions set forth in this chapter, or subject to other special attributes on account of their ownership by the Tribe as a corporate entity or by the Secretary as trustee for the Tribe, except as provided in this section.

(1) If the ownership of the properties by the Secretary or the Tribe or a subentity of the Tribe removes the property from ad valorem taxation, payments must be made by the Tribe in lieu of taxation that are equivalent to the taxes that otherwise would be paid if the property were subject to levy.

(2) The Tribe may lease, sell, mortgage, restrict, encumber, or otherwise dispose of non-Reservation lands in the same manner as other persons and entities under state law. The Tribe as landowner shall be subject to the same obligations and responsibilities as other persons and entities under state and local law, including local zoning and land use laws and regulations.

(B) All non-Reservation properties and all activities conducted on the properties shall be subject to the laws, ordinances, taxes, and regulations of the State and its political subdivisions, except as specifically provided in this chapter and the federal implementing legislation. This general jurisdictional principle shall extend to non-Reservation properties held by the Tribe as a corporate entity and to properties held in trust by the United States designated as non-Reservation property when acquired. The laws,

ordinances, taxes, and regulations of the State and its subdivisions shall apply to non-Reservation properties in the same manner as the laws, ordinances, taxes, and regulations apply to other properties held by non-Indians located in the same jurisdiction.

Section 27-16-110. (A) Except as specifically provided in the federal implementing legislation and this chapter, all laws, ordinances, and regulations of South Carolina and its political subdivisions govern the conduct of gambling or wager by the Tribe on and off the Reservation.

(B) The State shall govern the conduct of bingo under Article 23, Chapter 21 of Title 12, Regulation of Bingo Games, including regulations or rulings issued in relation to that article, except as provided by the special bingo license to which the Tribe is entitled in accordance with this section if it elects to sponsor bingo games under the special license.

(1) For purposes of conducting the game of bingo, the Tribe is deemed a nonprofit organization under Article 23, Chapter 21 of Title 12.

(2) If the Tribe elects to conduct the game of bingo either on or off the reservation, the Tribe shall obtain a license from the South Carolina Tax Commission. Based on the Tribe's election, the Tribe may be licensed by the South Carolina Tax Commission to conduct games of bingo under a regular license allowed nonprofit organizations or under the special license provided by this section.

(C) The Tribe may apply to the South Carolina Tax Commission for a special bingo license in lieu of licenses authorized by Article 23, Chapter 21 of Title 12. A special or regular license must be granted if the Tribe complies with licensing requirements and procedures. The special license is identical in all respects to the class of license permitting the highest level of prizes allowed by law and carries the same privileges and duties as the class of license permitting the highest level of prizes provided by law, except:

(1) The frequency of the sessions must be determined by the Executive Committee but must be no more frequent than six sessions a week, with sessions on Sundays prohibited unless state law otherwise expressly allows Sunday sessions.

(2) The amount of prizes offered each session must be determined by the Tribe, but must not be greater than one hundred thousand dollars for any game.

(3) The Tribe shall pay, in lieu of an admission, a head, a license, or any other bingo tax, a special bingo tax equal to ten percent of the gross proceeds received during each session. No other federal, state, or local taxes apply to revenues generated by the bingo games operated by the Tribe. All revenues derived from the special bingo tax must be collected by the South Carolina Tax Commission and deposited with the State Treasurer for the benefit of the General Fund of South Carolina.

(4) At least fifty percent of the gross proceeds received by the Tribe during a calendar quarter must be returned to the players in the form of prizes. For purposes of this section, 'gross proceeds' does not include the ten percent special bingo tax.

(5) The Tribe is entitled to two bingo licenses, and these licenses may be used to operate at two locations only. They are not assignable to any other entity or individual.

(6) The net proceeds derived by the Tribe from the conduct of bingo may be used for any purpose authorized by the Tribe.

(D) The Tribe may elect to operate one of the games under a special bingo license off the Reservation and not within the one hundred forty-four thousand acre Catawba Claim Area, but before doing so, it first must obtain the approval of the governing authority of the county and any municipality in which it seeks to locate the facility. If the Tribe elects to operate one or both of the games off the Reservation but within the one hundred forty-four thousand acre Catawba Claim Area, it shall do so in an area zoned

compatibly for commercial activities after consulting with the municipality or county where a facility is to be located.

(E) The sponsor and promoter of the bingo games is the Catawba Indian Tribe, and all profits gained from the enterprise accrue to the Tribe. The South Carolina Tax Commission, or its regulatory successor, has the power to administer, oversee, and regulate all bingo games sponsored and conducted by the Tribe, audit and enforce the operation of the games, and assess and collect taxes, interest, and penalties in accordance with the laws and regulations of the State as they apply to the Tribe. The South Carolina Tax Commission, or its regulatory successor, has the right to suspend or revoke the Tribe's bingo license or special bingo license if the Tribe violates the law with regard to conducting the game. However, the Tax Commission, or its regulatory successor, first shall notify the Tribe of violations and provide the Tribe with an opportunity to correct the violations before its license may be revoked. Failure to pay bingo taxes, interest, or penalties may be grounds for license revocation.

(F) A license of the Tribe to conduct bingo must be revoked if the game of bingo is no longer licensed by the State. If the State resumes licensing the game of bingo, the Tribe's license or special license must be reinstated if the Tribe complies with all licensing requirements and procedures.

(G) The Tribe may permit on its Reservation video poker or similar electronic play devices to the same extent that the devices are authorized by state law. The Tribe is subject to all taxes, license requirements, regulations, and fees governing electronic play devices provided by state law, except if the reservation is located in a county or counties which prohibit the devices pursuant to state law, the Tribe nonetheless must be permitted to operate the devices on the Reservation if the governing body of the Tribe so authorizes, subject to all taxes, license

requirements, regulations, and fees governing electronic play devices provided by state law.

(H) If the Tribe elects to sponsor and conduct games of bingo under a regular license allowed nonprofit organizations under Article 23, Chapter 21 of Title 12, the Tribe must be taxed as a nonprofit corporation under that article.

Section 27-16-120. (A) The Tribe shall incorporate by reference and adopt the York County Building Code and may contract with York County for the services necessary to enforce, inspect, and regulate compliance with its code. The services must be provided at no charge by York County as an in-kind contribution toward settlement. In addition, those local jurisdictions which exact a fee, a permit, or inspection services shall waive the fees otherwise charged for building permit or inspection services on the Reservation. The Tribe is empowered, but not required, to adopt building code provisions to be applied on the Reservation in addition to, but not in derogation of, the York County Building Code.

(B) All state and local environmental laws and regulations apply to the Tribe and to the Reservation and are fully enforceable by all relevant state and local agencies and authorities. Similarly, all requirements that a license, permit, or certificate be obtained from a state or local agency also apply to the Tribe and to the Reservation. This provision extends without limitation to all environmental laws and regulations adopted in the future.

(1) The Tribe, the Executive Committee, and all members of the Tribe have the same status as other citizens or groups of citizens to contest, object to, or intervene in a proceeding or an action in which environmental regulations are being made, adjudicated, or enforced or in which licenses, permits, or certificates of convenience and necessity are being issued by an agency of the State or a local government and no special or preferential status under any laws.

(2) The Tribe has the authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or by local governing bodies. However, tribal regulations apply only to the Reservation and not to property surrounding the Reservation or non-Reservation property or to the use of the Catawba River. Tribal regulations also do not apply to activities or uses off the Reservation, even if those activities affect air quality on the Reservation.

(3) The Tribe is not authorized to invoke sovereign immunity against a suit, a proceeding, or an enforcement action involving state or local environmental laws or regulations and is subject to all enforcement orders, restraining orders, fees, fines, injunctions, judgments, and other corrective or remedial measures imposed by the laws. This section does not impose different standards or requirements on the Tribe or the Secretary, when acting on the Tribe's behalf, than would be applied to a private corporation.

(C) With respect to a land use regulation within the Reservation, the Tribe has the power to adopt and enforce a land use plan after consultation with York and Lancaster Counties for those parts of the Reservation located in those respective jurisdictions. The Tribe and the affected governing bodies shall follow the substantive considerations and consultative procedures described in the Settlement Agreement.

(D) All public health codes of South Carolina and any county in which the Reservation is located are applicable on the Reservation.

(E) Hunting and fishing, on or off the Reservation, must be conducted in compliance with the laws and regulations of South Carolina. Members of the Tribe are subject to all state and local regulations governing hunting and fishing on and off the Reservation. However, for ninety-nine years following the effective date of this chapter, members of the Tribe are entitled to personal state hunting and fishing licenses without payment of fees. The Tribe and its members are subject to the

same fees and requirements as all other citizens of the State in applying for and obtaining commercial hunting and fishing licenses. The Tribe has the authority to impose hunting, fishing, and wildlife rules and regulations on the Reservation that are stricter than those adopted by the State.

(F) The littoral and riparian rights of the Catawba Indian Tribe in the Catawba River or in other streams or waters crossing their lands do not differ in any respect from the rights of other owners whose land abuts nontidal bodies of water or nontidal water courses in South Carolina. The rights and obligations covered by this subsection include, but are not limited to, those described in the Settlement Agreement. These qualifications apply to the Existing Reservation, lands acquired for the Expanded Reservation, other lands acquired by or for the benefit of the Tribe, and non-Reservation lands.

(G) Alcohol is prohibited on the Reservation unless the Tribe adopts laws or ordinances permitting the sale, possession, or consumption of alcohol on the Reservation. If the Tribe adopts the laws or ordinances, they must incorporate all state standards and regulations regarding hours, sales to minors, employment, consumption, possession, and standards for licensing. However, the Tribe may impose stricter standards and regulations than those prescribed by state law. If beer, wine, and alcoholic liquor are sold on the Reservation, licenses must be issued by the State in accordance with South Carolina law, and all beer, wine, and alcoholic liquor taxes must be paid to the State in accordance with South Carolina law.

Section 27-16-130. (A) The Tribe, its members, the Tribal Trust Funds, and other persons or entities affiliated with or owned by the Tribe, members of the Tribe, or the Tribal Trust Funds, whether a resident, located, or doing business on or off the Reservation, are subject to all state and local taxes, sales taxes, real and personal property taxes, excise taxes, estate taxes, and all other taxes, licenses, levies, and fees, except as

expressly provided in this section or the federal implementing legislation. Any other person or business entity which locates, operates, or does business on the Reservation is subject without exception to all state and local taxes, licenses, and fees, unless otherwise expressly provided in this chapter. To the extent the Tribe may be subject to taxes under this section, the Tribe must be taxed as if it were a business corporation incorporated under the laws of South Carolina unless otherwise expressly provided.

(B) If the Tribe elects to sponsor and conduct games of bingo under the special bingo licenses under Section 27-16-110, (C) the gross revenues generated by the bingo games must be subject to the ten percent tax levy specified in that section exclusively, and no other federal, state, or local taxes apply to revenues generated by the bingo games which are received by the Tribe.

(C) (1) Income of the Tribe, subdivisions and governmental agencies of the Tribe, including entities owned by the Tribe or the federal government on behalf of the Tribe, the Tribal Trust funds, and tax revenues collected by the Tribe by levy or assessment which are nontaxable for federal income tax purposes because of the Tribe's status as a recognized or restored Indian tribe also are nontaxable for purposes of state income taxes or local income taxes.

(2) Members of the Tribe are liable for payment of state and local income taxes to the same extent as any other person in the State, except income earned by members of the Tribe for work performing governmental functions solely on the Reservation is exempt for ninety-nine years from the effective date of this chapter. Income earned by members of the Tribe from the sale of Catawba Indian pottery and artifacts, on or off the Reservation, which are made by members of the Tribe are exempt from state and local income taxes. No funds distributed pursuant to the Per Capita Payment Trust Fund created by the federal implementing legislation are subject at the time of distribution to state or local income taxes.

However, income subsequently earned on shares distributed to members of the Tribe is subject to the same state and local income taxes as other persons in the State pay.

(3) A person or other entity not exempt from income taxes under items (1) and (2) are liable for all federal, state, and local income taxes otherwise due regardless of whether or not they are doing business on the Reservation.

(D) (1) All lands held in trust by the United States for the Tribe as part of the Reservation, all nonresidential buildings, fixtures, and real property improvements owned by the Tribe or held in trust by the United States for the Tribe on the Reservation are exempt from all property taxes levied by the State, a county, a school district, and a special purpose district. If the Tribe owns a partial interest in property or a business, the property tax exemption provided in this section is applicable to the extent of the Tribe's interest.

(2) (a) Single and multi-family residences, including mobile homes, situated on the Reservation are exempt from all property taxes levied by the State, a county, a school district, and a special purpose district if all the following apply:

(i) They are owned by the Tribe, members of the Tribe, or Tribal Trust Funds.

(ii) For single family residences, if they are occupied by a member of the Tribe or the surviving spouse of a deceased member of the Tribe.

(iii) For multifamily residences:

(a). If the property is valued on a per unit basis, those units which are occupied by a member of the Tribe or the surviving spouse of a deceased member or are unoccupied are exempt from property taxes. All other occupied units are subject to property taxes to the same extent that similar property is assessed and taxed elsewhere in the same jurisdiction. Occupancy is determined on the assessment date for the property.

(b). If the property is not valued on a per unit basis, the property is exempt from property taxes based on the percentage of units which are occupied by a member of the Tribe or the

surviving spouse of a deceased member of the Tribe, and the property is subject to property taxes to the same extent that similar property is assessed and taxed elsewhere in the same jurisdiction based on the percentage of units not so occupied. In calculating the value, unoccupied units must not be considered. Occupancy is determined on the assessment date for the property.

(iv) Rental property constructed by the Tribe on the reservation through an Indian Housing Authority which is financed by HUD is exempt from all property taxes. In lieu of the taxes, the authority may agree to make payments to the county or a political subdivision for improvements, services, and facilities furnished by the county or political subdivision for the benefit of the housing project. However, the payments may not exceed the estimated cost to the county or political subdivision of the improvements, services, or facilities furnished.

(c) For purposes of this section, residential property is deemed to be owned by a member of the Tribe if the member or the surviving spouse of a member owns at least a one-half undivided interest in the property, and a unit is deemed occupied by members of the Tribe if at least one member or the surviving spouse of a member is living in the single-family residence or in a unit of a multi-family residence.

(3) All buildings, fixtures, and real property improvements located on the Reservation which are not exempt from real property taxes under items (1) or (2) are subject to all property taxes levied by the State, a county, a school district, a special purpose district, and any other political subdivision to the same extent that similar buildings, fixtures, or improvements are assessed and taxed elsewhere in the same jurisdiction. However, the underlying land or leasehold in the land is not subject to real property taxes. All buildings, fixtures, and improvements subject to real property taxes are eligible for a tax abatement or temporary exemption allowed new business investments to the same extent as similar

properties qualify for exemption or abatement in the same county.

(4) The Tribe is authorized to levy taxes on buildings, fixtures, improvements, and personal property located on the Reservation, even though the properties may be exempt from property taxation by the State or its subdivisions, and may use the tax revenues for appropriate tribal purposes. The Tribe also may exempt or abate the taxes. York and Lancaster Counties and the South Carolina Tax Commission shall provide the necessary assistance to the Tribe if the Tribe chooses to assess tribal real property taxes as if they were property taxes imposed by a political subdivision.

(5) Real property and improvements owned by the Tribe or by members of the Tribe, or both, and not located on the Reservation are subject to all property taxes levied by the State, the county, the school district, special purpose districts, and any other political subdivisions where the property is located.

(6) To the extent that any non-Reservation real property held in trust by the Secretary is not taxable for property tax purposes, it is subject to the payment of a fee or fees by the Tribe in an amount equivalent to the real property tax that would have been paid to the applicable taxing authority if the property had not been held in trust.

(E) (1) All personal property owned by the Tribe during ninety-nine years from the effective date of this chapter and used solely on the Reservation is exempt from personal property taxes levied by the State, a county, a school district, a special purpose district, and any other political subdivision. However, motor vehicles owned by the Tribe during the ninety-nine-year period are exempt from personal property taxes even if used off the Reservation.

(2) All personal property owned by members of the Tribe is subject to personal property taxes levied by the State, a county, a school district, a special purpose district, and any other political

subdivisions where the property is deemed to be located.

(3) All personal property located on the Reservation which is not exempt from personal property taxes under item (1) is subject to personal property taxes levied by the State, a county, a school district, a special purpose district, and any other political subdivision encompassing the Reservation to the same extent that similar personal property is assessed and taxed elsewhere in the jurisdiction.

(4) For purposes of subsection (D) and this subsection, the determination of whether the Tribe is the owner of property must be made in the same manner as for other taxpayers for South Carolina property tax purposes.

(F) Subject to perfected security interests, if a taxpayer subject to property taxes under subsections (D) and (E) fails to pay the taxes, the appropriate taxing authority for the county or other political subdivision has the power to levy against personal property subject to personal property taxes owned by the taxpayer within the county, on or off the Reservation, in order to satisfy the taxes due.

(1) If this levy against the personal property is not sufficient to satisfy the tax lien, the county or other political subdivision may certify the deficiency to the State, and the State shall levy against other taxable property of the taxpayer in the State and remit proceeds to the county or appropriate taxing authority which is owed the tax.

(2) If the county or other political subdivision cannot satisfy its lien, the county or appropriate taxing authority may require the Tribe to cease allowing the taxpayer to do business on the Reservation.

(3) If the taxpayer is in bankruptcy, the bankruptcy statutes apply to this section.

(4) The State or any political subdivision may not seize real property located on the Reservation.

(G) The Tribe and its members are subject to all license and registration fees and requirements, all periodic inspection fees and requirements, and all fuel taxes imposed by the State and local governments on motor vehicles, boats, airplanes, and other means of conveyance.

(H) The Tribe, its members, and the Tribal Trust Funds are liable for the payment of all state and local sales and use taxes to the same extent as any other person or entity in the State, except as specifically provided as follows:

(1) Purchases made by the Tribe for tribal government functions during ninety-nine years from the effective date of this chapter are exempt from state and local sales and use taxes.

(2) Catawba pottery and artifacts made by members of the Tribe and sold on or off the Reservation by the Tribe or members of the Tribe are exempt from state and local sales and use tax.

(3) During ninety-nine years from the effective date of this chapter, the sale on the Reservation of all other items, made on or off the Reservation, are exempt from state and local sales and use taxes but are subject to a special tribal sales tax levied by the Tribe equal to the state and local sales tax that would be levied in the jurisdiction encompassing the Reservation but for this exemption.

(a) The South Carolina sales and use tax laws, regulations, and rulings apply to the special tribal sales tax, and the special tribal sales tax must be administered and collected by the South Carolina Tax Commission.

(b) The South Carolina Tax Commission separately shall account for the special tribal sales tax, and the State Treasurer shall remit the special tribal sales tax revenues periodically to the Tribe at no cost to the Tribe.

(c) The tribal sales tax does not apply to retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. If it does not apply, the state sales tax applies.

(d) The Tribe shall impose a tribal use tax on the storage, use, or other consumption on the Reservation of tangible personal property purchased at retail outside the State when the vendor does not collect the tax. However, use taxes collected by a vendor which is not located in the State are subject to state use taxes, and the use tax must be remitted to the State and not the Tribe. Use taxes not collected by the vendor and remitted to the State are subject to the tribal use tax and must be collected directly by the Tribe.

(I) The Tribe shall pay a fee in lieu of school taxes. That fee must be determined by the school district in the same manner and must be the same amount paid by students from outside the county entering schools in the county.

(1) The fee payable by the Tribe must be reduced by funds received by the government for Impact Aid under Sections 20 U.S.C. 236 et seq. or other federal funds designed to compensate school districts for loss of revenue due to the nontaxability of Indian property.

(2) A fee paid on behalf of a child under this section must be excluded from state income of the child or his family for state income tax purposes.

(J) Members of the Tribe are liable for payment of all estate and inheritance taxes, except the undistributed share of a member in the Per Capita Payment Trust Fund established by the federal implementing legislation and the Settlement Agreement are exempt from state estate and inheritance taxes.

(K) The Indian Tribal Government Tax Status Act, 26 U.S.C. Section 7871, applies to the Tribe and its Reservation for South Carolina income tax purposes to the same extent as provided in the federal implementing legislation.

Section 27-16-140. (A) The provisions of a federal law enacted after the date of enactment of the federal law implementing this agreement shall not apply in the State if the provision materially affects or preempts the application of the laws of

the State, including application of the laws of the State to lands owned by or held in trust for Indians, Indian Nations, Indian tribes, or bands of Indians. However, the federal law shall apply within the State if the State grants its approval by a law or joint resolution enacted by the General Assembly of South Carolina and signed by the Governor.

(B) If the entire federal implementing legislation is rendered invalid by a court, this chapter is invalid.

(C) Whenever possible, this chapter must be construed in a manner consistent with the Settlement Agreement. If there is a conflict between this chapter and the Settlement Agreement, this chapter governs. The Settlement Agreement must be maintained on file and available for public inspection in the Office of the Secretary of State and in the offices of the Clerks of Court for York and Lancaster Counties. Copies must be made available upon request upon the payment of reasonable and normal copying fees."

SECTION 2. This act takes effect when the Governor certifies that the Counties of York and Lancaster have taken all actions required of them by the Settlement Agreement. However, the Governor may not make the certification until the Congress of the United States has passed and the President of the United States has signed into law federal implementing legislation which he also certifies as consistent with the Settlement Agreement.

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–258

HIGH-SPEED RAIL DEVELOPMENT ACT OF 1993

SEPTEMBER 28, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

MINORITY VIEWS, SUPPLEMENTARY MINORITY VIEWS, SUPPLEMENTAL MINORITY VIEWS, AND ADDITIONAL VIEWS

[To accompany H.R. 1919]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1919) to establish a program to facilitate development of high-speed rail transportation in the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

69–006

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "High-Speed Rail Development Act of 1993".

SEC. 2. FINDINGS.

The Congress finds that—

(1) high-speed rail may offer a safe and efficient alternative to aviation and motor vehicle travel for intercity transportation in certain corridors linking major metropolitan areas in the United States;

(2) high-speed rail may have environmental advantages over certain other forms of intercity transportation;

(3) Amtrak's Metroliner service between Washington, District of Columbia, and New York, New York, the United States premier high-speed rail service, has shown that Americans will use high-speed rail when that transportation option is available;

(4) high-speed rail may help relieve congestion experienced in densely travelled corridors;

(5) high-speed rail should be developed in those intercity corridors where such service is appropriate;

(6) new high-speed rail service should not receive Federal subsidies for operating and maintenance expenses;

(7) State and local governments should take the prime responsibility for the implementation of high-speed rail service;

(8) the private sector should participate in funding the development of high-speed rail systems;

(9) in some intercity corridors, Federal financial capital assistance is required to supplement the financial commitments of State and local governments and the private sector to ensure the development of the infrastructure required for high-speed rail systems;

(10) new technologies can facilitate the development of high-speed rail in the United States;

(11) the development of these technologies can expand the competitiveness of United States industry in this country and overseas; and

(12) Federal assistance is required for research and development of high-speed rail technologies for commercial application in high-speed rail service in the United States.

TITLE I—HIGH-SPEED RAIL DEVELOPMENT

SEC. 101. NATIONAL HIGH-SPEED RAIL ASSISTANCE PROGRAM.

(a) AMENDMENT.—The Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) is amended by adding at the end the following new title:

"TITLE X—HIGH-SPEED RAIL ASSISTANCE

"SEC. 1001. DESIGNATION OF CORRIDORS.

"(a) PETITION.—The Governor or Governors of a State or States that substantially encompass a proposed corridor may petition the Secretary for designation under this section.

"(b) CONTENTS.—Any petition submitted pursuant to subsection (a) shall include such information as the Secretary determines by regulation to be necessary to evaluate the merits of that corridor. Any such petition shall also designate a public agency, for each petitioning State, that is authorized by the State to be responsible

for coordination of activities under the proposed high-speed rail program, and authorized to receive financial assistance under sections 1002 or 1003.

"(c) CRITERIA FOR DESIGNATION.—The Secretary is authorized to designate as a designated corridor any corridor where the Secretary determines that high-speed rail offers the potential for cost-effective intercity passenger transportation as part of the Nation's transportation system. Such designation shall be based on such criteria as the Secretary considers appropriate, including—

"(1) the integration of the designated corridor into Statewide and metropolitan area transportation planning undertaken pursuant to sections 134 and 135 of title 23, United States Code;

"(2) the interconnection of the proposed high-speed rail service with other parts of the Nation's transportation system, including the relationship of the proposed service to intermodal terminals;

"(3) the effect of the proposed high-speed rail service on the congestion of other modes of transportation;

"(4) the effect of the proposed service on State and local governments' efforts to attain compliance with the Clean Air Act;

"(5) the past and proposed financial commitments and other support of State and local governments and the private sector to the proposed high-speed rail program, including the acquisition of rolling stock;

"(6) the estimated level of ridership;

"(7) the estimated capital cost of the proposal;

"(8) the expected ability of the projected revenues of the proposed service, along with any financial commitments of State or local governments and the private sector, to cover capital costs and operating and maintenance expenses;

"(9) the support and cooperation of any owners and operators of existing rail facilities proposed for improvement in developing the high-speed rail service; and

"(10) the effect of the proposed high-speed rail service on other transportation services in operation or under development.

"(d) ADDITIONAL DESIGNATIONS.—(1) The Secretary shall, upon the written request of the Governor or Governors of the State or States that substantially encompass the proposed corridor, designate as a designated corridor—

"(A) any intercity rail corridor designated as a high-speed rail corridor by the Secretary under section 104(d)(2) of title 23, United States Code; or

"(B) any discrete portion of such a corridor.

"(2) The Secretary shall, upon the written request of the Governor or Governors of the State or States that substantially encompass the proposed corridor, designate as a designated corridor any intercity rail corridor, other than the main line of the Northeast Corridor between Washington, District of Columbia, and Boston, Massachusetts, that includes a substantial segment where regularly scheduled rail passenger service operates at speeds in excess of 100 miles per hour as of the date of enactment of the High-Speed Rail Development Act of 1993.

"(3) Any request under this subsection shall include the designation of a public agency, for each requesting State, that is authorized by the State to be responsible for coordination of activities under the proposed high-speed rail program, and authorized to receive financial assistance under sections 1002 or 1003.

"(e) ADMINISTRATIVE EXPENSES.—The Secretary may provide financial assistance to a public agency designated under subsection (b) for up to 80 percent of the administrative expenses incurred by such agency, and determined eligible by the Secretary, in carrying out its responsibilities in connection with the development of a designated corridor. The Secretary shall establish a formula for the allocation of assistance under this subsection.

"SEC. 1002. CORRIDOR MASTER PLANS.

"(a) REQUIREMENT.—An applicant shall prepare and submit to the Secretary, and may periodically amend, a corridor master plan for a corridor, subject to the approval of tho Secretary.

"(b) CONTENTS.—A corridor master plan prepared under subsection (a) shall identify a coordinated program of improvements to advance the establishment of high-speed rail service in the corridor, including those improvements not eligible for financial assistance under this title. Such plan shall include—

"(1) identification of how the preposed high-speed rail service relates to State and metropolitan area transportation plans of the affected States and metropolitan areas;

"(2) identification of the specific elements that comprise the program to achieve the high-speed rail service, including their estimated costs, schedules, timing, and relationship with other transportation projects;

"(3) identification of the transportation benefits expected to be derived from each element, including reductions in trip times and increases in speeds;

"(4) identification of specific improvements that comprise each element, a representation of the extent to which such improvements are eligible for financial assistance under this title, and an identification of all proposed sources of funding for such specific improvements;

"(5) identification of anticipated levels of ridership and projections of revenues and expenses associated with the proposed high-speed rail service when completed and for each element undertaken to achieve high-speed service, including estimates of any operating subsidies that would be required and the sources of such subsidies;

"(6) an operating plan identifying the proposed schedule and frequency of the high-speed rail service and the coordination of such service with any other rail operations on the corridor; and

"(7) such other information as may be required by the Secretary.

"(c) PLAN PREPARATION ASSISTANCE.—The Secretary, by regulation and to the extent the Secretary considers reasonable, may provide financial assistance to an applicant preparing a corridor master plan for up to 50 percent of the costs associated with preparation of such plan incurred after the date of enactment of the High-Speed Rail Development Act of 1993, including the costs of design, environmental and route selection analysis, and preliminary engineering necessary to support such analyses. The Secretary shall not provide financial assistance under this subsection in an amount that exceeds the amount provided by State and local governments for such preparation costs.

"SEC. 1002. FINANCIAL ASSISTANCE FOR DESIGNATED CORRIDORS.

"(a) AUTHORITY.—The Secretary may provide financial assistance to an applicant to fund improvements eligible under subsection (c) of this section. No financial assistance shall be provided under this section—

"(1) for improvements to the main line of the Northeast Corridor, between Washington, District of Columbia, and Boston, Massachusetts; or

"(2) for improvements relating to a designated corridor in a State where the State prohibits the expenditure of State funds for such improvements.

"(b) TERMS, CONDITIONS, AND PROCEDURES.—The Secretary shall establish appropriate terms, conditions, and procedures for the provision of financial assistance under this section.

"(c) ELIGIBLE IMPROVEMENTS.—Improvements eligible for financial assistance under subsection (a) shall be those improvements, other than the acquisition of rolling stock, that are necessary to facilitate the development of high-speed rail service, including—

"(1) final engineering and design;

"(2) site specific environmental analyses and environmental mitigation;

"(3) acquisition of right-of-way and related property; and

"(4) acquisition, construction, rehabilitation, upgrading, or replacement of roadbed, structures, track, signal and communications systems, electric traction systems, maintenance-of-way facilities, maintenance-of-equipment facilities, private highway-rail grade crossings (including payments to property owners to close such crossings where appropriate), and those portions of terminals and stations directly related to the operation of the high-speed rail service.

Improvements that are eligible for funding under other Federal transportation programs shall not be eligible for financial assistance under subsection (a).

"(d) MINIMUM FUNDING.—Financial assistance may not be provided under subsection (a) unless such assistance enables the completion of at least one full element of a program to achieve high-speed rail service.

"(e) PRIVATE FUNDING.—In providing financial assistance under subsection (a), the Secretary shall ensure that the element or elements for which such assistance is provided include the maximum practicable private funding.

"(f) FUNDING PROPORTIONS.—(1) In providing financial assistance under subsection (a), the Secretary may provide financial assistance for up to 80 percent of the cost of specific eligible improvements. No less than 20 percent of the costs of such improvements shall be provided by State or local funds.

"(2) Notwithstanding paragraph (1), the Secretary shall not provide financial assistance under subsection (a) relating to a designated corridor in an amount which, in combination with any amounts previously provided under subsection (a) with respect to such designated corridor, exceeds the aggregate amount provided, after April 29, 1993, for the development of the designated corridor by State and local governments, and other Federal transportation programs.

"(g) CRITERIA.—In determining whether to provide financial assistance to fund an element under subsection (a), the Secretary shall consider how the element meets the criteria identified in section 1001(c), the information contained in the relevant corridor master plan, commitments by State and local governments to fund any increases in the operating deficit of the National Railroad Passenger Corporation with respect to that Corporation's operation over the designated corridor that result from the completion of the element, and such other information as the Secretary considers appropriate.

"(h) EARLY ASSISTANCE.—The Secretary may provide financial assistance under subsection (a) for an element not contained in a corridor master plan prepared under section 1002 only if such financial assistance is provided, with respect to a designated corridor, before the expiration of 30 months after the date of enactment of the High-Speed Rail Development Act of 1993.

"SEC. 1004. HIGH-SPEED RAIL TECHNOLOGY DEVELOPMENT.

"(a) AUTHORITY.—The Secretary is authorized to undertake research and development of high-speed rail technologies for commercial application in high-speed rail service in the United States.

"(b) ELIGIBLE RECIPIENTS.—In carrying out activities authorized by subsection (a), the Secretary may provide financial assistance to any United States private business, educational institution located in the United States, State or local government or public authority, or agency of the Federal Government.

"SEC. 1002. BUY AMERICA REQUIREMENTS.

"(a) GENERAL RULE.—Except as provided in subsection (b), an applicant receiving financial assistance under section 1003 shall ensure that the articles, materials, and supplies purchased with such financial assistance are substantially all of United States manufacture or production. An applicant that fails to meet the requirement of this section may not receive further assistance under section 1003.

"(b) EXEMPTION.—The Secretary may grant an exemption from this section to an applicant with respect to the purchase of articles, materials, or supplies, or may grant an exemption for any improvement incorporating such articles, materials, or supplies, if the Secretary determines that—

"(1) the application of this section is inconsistent with the public interest;

"(2) the cost of imposing such requirements with respect to such articles, materials, or supplies is unreasonable;

"(3) such articles, materials, or supplies are not produced or manufactured in the United States in sufficient and reasonably available quantities or of a satisfactory quality;

"(4) such articles, materials, or supplies cannot be purchased and delivered in the United States within a reasonable time; or

"(5) such articles, materials, or supplies are produced or manufactured in a country that the President has determined, in its government procurement contracts, extends national treatment to articles, materials, or supplies produced or manufactured in the United States.

"(c) EXCEPTION.—This section shall not apply with respect to an element in any case in which the total cost of the articles, materials, or supplies purchased in connection with such element with financial assistance provided under section 1003 is less than $1,000,000.

"SEC. 1002. EMPLOYEE PROTECTION.

"(a) ESTABLISHMENT OF PROTECTIVE CONDITIONS.—The Secretary shall, within 60 days after the date of enactment of this title, and after consulting with representatives of rail unions, railroads, and States, issue and publish in the Federal Register a list of conditions to be imposed to protect the interests of railroad employees who may be adversely affected as a result of financial assistance provided under section 1003. Such protective conditions shall include—

"(1) a benefit schedule for such employees;

"(2) contracting and subcontracting restrictions that the Secretary determines are appropriate with respect to any person that performs work that is traditionally performed by railroad employees on a designated corridor and that is funded by financial assistance provided under section 1003; and

"(3) with respect to those tasks traditionally performed by railroad employees on a designated corridor, a requirement that railroad employees who are furloughed or separated (other than for cause) shall, to the maximum extent feasible, and unless found to be unqualified, have the first right of hire with—

"(A) any person that will be operating high-speed rail service on that corridor or performing maintenance, dispatching, or signaling work in conjunction with such service; and

"(B) any contractor for construction work that is funded by financial assistance under section 1003.

For purposes of this paragraph, a railroad shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.

"(b) DEPRIVED OF EMPLOYMENT.—A railroad employee shall be considered deprived of employment if the employee—

"(1) was working on a designated corridor prior to the provision of financial assistance under section 1003 and is—

"(A) furloughed or separated as a result of such financial assistance; and

"(B) unable to obtain a position with reasonably comparable duties to that which the employee has performed in the preceding 12 months, and for which the employee is qualified, with—

"(i) any person that will be operating high-speed rail service on that corridor or performing maintenance, dispatching, or signaling work in conjunction with such service;

"(ii) any railroad through the normal exercise of seniority rights; or

"(iii) in the case of a subordinate official, in addition to clauses (i) and (ii), any railroad operating in the corridor; or

"(2)(A) is furloughed or separated as a result of an employee described in paragraph (1)(A) exercising normal seniority rights to obtain or retain railroad employment; and

"(B) is unable to obtain a position with any railroad through the normal exercise of seniority rights.

"(c) BENEFIT SCHEDULE.—(1) The benefit schedule under this section shall provide for the payment to employees deprived of employment of—

"(A) subsistence allowances;

"(B) moving expenses for employees who must make a change in residence;

"(C) separation allowances described in paragraph (2)(C);

"(D) health and welfare insurance premiums; and

"(E) any other payment the Secretary considers appropriate.

"(2) The benefit schedule under this section shall limit the payments under paragraph (1) to—

"(A) a maximum period of 18 months for any employee, whether consecutive or intermittent, or for a period equal to the employee's length of service, if less than 18 months;

"(B) except as provided in subparagraph (C), a maximum amount of 18 months' pay, or monthly pay for a period equal to the employee's length of service, if less than 18 months, reduced by—

"(i) compensation earned from employment during the period referred to in subparagraph (A); and

"(ii) any benefits received under any unemployment insurance law during the period referred to in subparagraph (A); and

"(C) a lump sum separation allowance, computed as follows, in the event the employee chooses to resign and accept such lump sum settlement in lieu of all other benefits and protection provided under this section:

"Years of Service	Separation Allowance
Less than 1	5 days' pay for each month worked
At least 1 and less than 2	3 months' pay
At least 2 and less than 3	6 months' pay
At least 3 and less than 5	9 months' pay
5 and over	12 months' pay

"(3) One months' pay for purposes of:

"(A) paragraph (2)(B), shall be the equivalent of 1/12th of the total compensation received by the employee in the last 12 months of employment in which the employee earned compensation prior to the date on which the employee was deprived of employment, with the monthly amount adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for; and

"(B) paragraph (2)(C) shall be computed by multiplying by 30 the appropriate daily rate of the position last occupied.

"(d) SPECIAL MOVING EXPENSES RULE.—A railroad employee who would be considered to be deprived of employment but for paragraph (1)(B) or (2)(B) of subsection (b), and who must make a change of residence in order to obtain or retain active employment shall be eligible to receive moving expenses under the benefit schedule under this section, to the extent that such expenses are not payable to or for the employee under applicable collective bargaining agreements or their employer's corporate policy.

"(e) ELECTION.—(1) Any employee who receives any payment under the benefit schedule under this section shall be deemed to waive any employee protection benefits otherwise available to such employee under—

"(A) any other provision of law;

"(B) any applicable contract or agreement; or

"(C) any decision or order of the Interstate Commerce Commission.

"(2) Any employee electing and claiming benefits under the benefit schedule under this section shall be required to execute a form of release acknowledging and consenting to the waiver described in paragraph (1). Nothing in this section shall be deemed to determine or otherwise affect the priority, status, or timing of payment of, or the liability for any claim for, employee protection which might have existed in the absence of this section for any employee who elects not to receive benefits under the benefit schedule.

"(f) IMPLEMENTING PLAN.—(1) Applicants for financial assistance under section 1003 shall submit to the Secretary, with a copy to affected railroads and the authorized representatives of the employees on the designated corridors of such railroads, a proposed implementing plan to implement the employee protective conditions established under this section. The plan shall include a procedure to identify reductions in the work force related to the financial assistance, and an arbitration process for resolving disputed labor protection claims, including the burden of proof of the claimant and the party disputing the claim.

"(2) The Secretary shall consult with the affected railroads and the authorized representatives of the employees on the designated corridors of such railroads prior to approving any proposed implementing plan under paragraph (1). The Secretary may not approve the plan unless the plan ensures that the employee protective conditions established under this section will be fully implemented on the designated corridor.

"(3) In providing financial assistance under section 1003, the Secretary shall include as a condition of such assistance a requirement that the plan approved under this section be implemented.

"(4) Not less than annually, the Secretary shall publish in the Federal Register a list of implementing plans that have been approved under this section.

"(g) DEFINITION.—As used in this section, the term 'a change in residence' means change of place of residence occasioned by a change in work location to a place that is more than 30 normal highway route miles from the employee's residence and also farther from the residence than was the employee's former work location.

"SEC. 1007. DEFINITIONS.

"For purposes of this title—

"(1) the term 'applicant' means a public agency designated under section 1001(b) or (d)(3), or a group of such public agencies, seeking financial assistance under this title for development of a designated corridor;

"(2) the term 'corridor' means an existing or proposed route for high-speed rail serving two or more major metropolitan areas in the United States;

"(3) the term 'designated corridor' means a corridor designated by the Secretary under section 1001;

"(4) the term 'element' means a discrete portion of a program to develop a designated corridor that has a demonstrable intercity ground transportation benefit independent of other improvements to such corridor;

"(5) the term 'financial assistance' includes grants, contracts, and cooperative agreements;

"(6) the term 'high-speed rail' has the meaning given such term under section 511(n) of this Act;

"(7) the term 'improvement' means a discrete activity that contributes to the development of the infrastructure of a designated corridor;

"(8) the term 'railroad employee' means a nonmanagement railroad employee, including a subordinate railroad official, who is entitled to union representation;

"(9) the term 'rolling stock' means locomotives and rail passenger cars;

"(10) the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States;

"(11) the term 'State or local funds' does not include funds provided by private sector entities specifically for the purpose of developing a designated corridor; and

"(12) the term 'United States private business' means a business entity organized under the laws of the United States, or of a State, and conducting substantial business operations in the United States.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended by adding at the end the following:

"TITLE X—HIGH-SPEED RAIL ASSISTANCE

SEC. 102. AUTHORIZATION OF APPROPRIATIONS.

(a) HIGH-SPEED RAIL ASSISTANCE.—There are authorized to be appropriated to the Secretary of Transportation for the National High-Speed Rail Assistance Program autherized under sections 1001, 1002, 1003, and 1006 of the Railroad Revitalization and Regulatory Reform Act of 1976—

(1) $125,000,000 for fiscal year 1994;
(2) $215,000,000 for fiscal year 1995;
(3) $240,000,000 for fiscal year 1996;
(4) $290,000,000 for fiscal year 1997; and
(5) $340,000,000 for fiscal year 1998.

(b) TECHNOLOGY DEVELOPMENT.—There are authorized to be appropriated to the Secretary of Transportation for high-speed rail technology development authorized under section 1004 of the Railroad Revitalization and Regulatory Reform Act of 1976—

(1) $15,000,000 for fiscal year 1994;
(2) $15,000,000 for fiscal year 1995;
(3) $15,000,000 for fiscal year 1996;
(4) $15,000,000 for fiscal year 1997; and
(5) $15,000,000 for fiscal year 1998.

(c) ADMINISTRATIVE EXPENSES OF SECRETARY.—Of the amounts authorized to be appropriated under subsections (a) and (b), the Secretary of Transportation may reserve the funds necessary for payment of the administrative expenses incurred by the Secretary in carrying out the Secretary's responsibilities under title X of the Railroad Revitalization and Regulatory Reform Act of 1976.

(d) ADMINISTRATIVE EXPENSES OF PUBLIC AGENCIES.—Of the amounts authorized to be appropriated under subsection (a) of this section, the Secretary of Transportation may reserve up to 1 percent for the purpose of providing financial assistance under section 1001(e).

(e) FUNDS TO REMAIN AVAILABLE.—Funds made available under this section shall remain available until expended.

(f) NORTHEAST CORRIDOR.—Section 601(a)(1)(B) of the Rail Passenger Service Act (45 U.S.C. 601(a)(1)(B)) is amended to read as follows:

"(B) $205,000,000 for fiscal year 1994, and $210,000,000 for fiscal year 1995.".

TITLE II—LABOR PROTECTION

SEC. 201. LABOR PROTECTION.

Title X of the Railroad Revitalization and Regulatory Reform Act of 1976, as added by title I of this Act, is further amended by adding at the end the following new section:

"SEC. 1008. LABOR STANDARDS.

"The Secretary shall take such action as may be necessary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work undertaken with financial assistance provided under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et seq.). The Secretary shall not approve any such financial assistance without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Wages rates provided for in collective bargaining agreements negotiated under and pursuant to the Railway Labor Act shall be considered in compliance with the Davis-Bacon Act.".

Purpose and Summary

On April 29, 1993, H.R. 1919, the High-Speed Rail Development Act of 1993 was introduced. H.R. 1919 is the first nationwide program designed to develop high-speed intercity rail passenger service as part of an intermodal transportation network. The bill is intended to foster State, local, Federal, and private industry partnerships to identify, fund, and implement high-speed rail service.

The bill authorizes appropriations totalling $1.21 billion over 5 years to initiate high-speed rail improvements. Under the bill, States may petition the Secretary of Transportation (Secretary) to designate intercity high-speed rail corridors. The Secretary may designate those high-speed rail corridors that meet objective criteria demonstrating that the high-speed rail service in the corridor offers the potential for cost-effective intercity public transportation. This designation is a prerequisite for the receipt of Federal funds under the bill. The applicant for each high-speed rail corridor, once it is designated, will be required to develop a master plan for a program to achieve high-speed rail service. The master plan will describe specific infrastructure improvements that must be undertaken to facilitate high-speed rail service as well as the estimated costs and benefits of each improvement.

Upon approval of the master plan, the Secretary is authorized to provide financial assistance for specific eligible improvements. Private funds provided for eligible infrastructure improvements are to be subtracted from the total cost of such improvements, with Federal and State or local governments sharing the remaining costs. The bill authorizes the Secretary to provide financial assistance for up to 80 percent of the cost of any specific eligible improvement. However, the total amount of financial assistance that the Secretary may provide under the bill will be limited to the total amount provided by State and local governments plus other Federal transportation programs after the date H.R. 1919 was introduced.

Under the bill, the Secretary is required to establish protective conditions for rail employees who are adversely affected as a result of funding provided under this program. Recipients of high-speed rail funding must agree to implement these protections fully as a condition of receiving Federal funds. In addition, the provisions of the Davis-Bacon Act will apply to construction work undertaken under this program. Finally, the bill requires applicants that receive Federal funds under the program to ensure that the articles, materials, and supplies purchased with such funds are substantially all of United States manufacture or production.

The bill authorizes appropriations totalling $75 million over 5 years for research and development of high-speed rail technologies for commercial application in the United States. It also authorizes appropriations for ongoing development of the Northeast Corridor Improvement Project for fiscal years 1994 and 1995.

Background and Need for Legislation

Secretary of Transportation Federico Peña, in testimony before the Committee this year, stated that:

[F]ast, safe, efficient, and convenient intercity transportation is inseparable from the health of our economy and the general welfare of our country. In our dispersed economic system, people must travel between cities to transact business, to negotiate deals, to purchase goods, and simply to visit others. It is clear that, as the economy grows, the demand for intercity travel will also grow. Conversely, the lack of a fast, safe, efficient, and convenient intercity transportation capability will serve as a hindrance to economic growth.

It is becoming increasingly clear that our overburdened transportation system is creating a hindrance to current and future economic growth. According to the Department of Transportation, more than 2 billion productive hours are lost annually because of highway congestion, at a cost to the Nation of $80 billion each year. Similarly, congestion at 34 major U.S. airports will result in an estimated annual cost of $8 billion by 1997.

Unfortunately, our best projections tell us that these conditions are not going to get any better. The Federal Highway Administration forecasts that vehicle-miles of travel will reach 2.3 trillion annually by 2005, a 50 percent increase over traffic levels of the late 1980s. Domestic air travel is expected to grow even more rapidly; domestic revenue passenger-miles could double to 690 billion by as early as 2005.

With these statistics in mind, the Committee believes that fundamental changes need to be made in our transportation priorities. As Secretary Peña has recognized, "[g]rowing transportation demand and the inability of existing transportation programs to meet this demand in a way that minimizes negative impact on our environment and our people have led to the point where, once again, the Nation's transportation system must evolve beyond its current capabilities." That necessary evolution has compelled President Clinton—as well as the Committee—to initiate efforts to encourage the development of high-speed rail.

While high-speed rail is not the only possible way to alleviate our traffic burdens, it is recognized increasingly as the most economically viable and socially acceptable solution to problems confronting many intercity corridors. Other alternatives, such as building new roads and airports, are becoming increasingly unaffordable and difficult to undertake due to environmental concerns and community opposition. For instance, it is estimated that as many as 44 highway lanes would have to be in place by the turn of the century to handle traffic between Miami and Fort Lauderdale. Despite the fact that the Federal Aviation Administration (FAA) reports that 27 major airports are severely congested, only one new airport has been constructed since 1974. In fact, the Coalition of Northeast Governors has supported high-speed rail improvements between Boston and New York to delay or avoid construction of a new airport in the Boston area. These scenarios, repeated throughout the Nation, have led transportation planners to look to high-speed rail for answers. The Committee believes that H.R. 1919 will provide needed incentives to interested State and local governments to facilitate the development of needed high-speed rail corridors.

BENEFITS OF HIGH-SPEED PASSENGER RAIL

Studies by the Department of Transportation, the Office of Technology Assessment, the General Accounting Office (GAO), and others reveal that high-speed rail systems in densely-populated corridors offer an economic, safe, energy efficient, and environmentally attractive alternative to highway and air travel.

A comparison of the attributes of passenger rail to other modes of transportation explains why these organizations have reached this conclusion. First, the national transportation system currently accounts for approximately 67 percent of all U.S. oil consumption. Of this amount, 70 percent is spent on highway usage. Compared to personal automobiles, buses, and aircraft, a train that utilizes diesel locomotives can move passengers with considerably less energy consumption and environmental pollution. Higher-speed rail technologies, such as electric trains (already in use on the Northeast Corridor between Washington, D.C. and New York City) have demonstrated even greater energy efficiencies and environmental benefits than traditional diesel-powered trains. Thus, for States trying to cut dependence on foreign oil and attempting to meet the constraints of the Clean Air Act, high-speed rail is a very attractive option.

The capacity of the current rail infrastructure is also a significant factor when compared to other transportation modes. While our highways and airports are increasingly congested and overutilized—and expansions are extremely expensive and increasingly unpopular—the existing national rail system is conspicuously underutilized. Amtrak currently is constrained from making significant service expansions because of capital deficiencies, despite the fact that the existing rail infrastructure in the United States is being used at only roughly 30 percent of its capacity. In addition, an expansive network of rail lines—over 200,000 miles—already exists. Because this system is in place and provides direct access to many of our metropolitan centers, capital requirements for developing high-speed rail service in many corridors will be less than that required for new highway or airport construction.

The ability to reduce transportation congestion and its associated economic costs is another significant benefit of high-speed rail. Several specific examples of passenger rail's traffic-reducing potential have been described this year in testimony before the Committee:

> Approximately 20 to 25 percent of flights departing from Boston's Logan Airport are destined for New York City airports located approximately 230 miles away. Providing high-speed service between Boston and New York City to permit three-hour express train service is projected to attract as many as 3 million passengers from Logan Airport (and off of congested Interstate 95) and onto Amtrak, thereby freeing over ten gates at Logan Airport for longer-distance air service.
>
> In the Pacific Northwest, 17 to 20 percent of all takeoffs and landings at Seattle-Tacoma International Airport carry passengers between Seattle and Portland. A State commission has estimated that an additional airport runway will cost in excess of $1 billion whereas the State transportation department estimates that three-hour passenger rail service between the cities

could be achieved with a $50.5 million investment in track and signal improvements.

The 280-mile Chicago-Detroit rail corridor links the Nation's third and fifth largest metropolitan centers and four other major urban centers and already has a lengthy segment of alignment and track conditions capable of supporting high-speed rail passenger service. The Transportation Research Board has projected that by 2010 this city pair will be the Nation's sixth most congested air corridor. Upgrading that corridor's infrastructure to accommodate high-speed trains will greatly reduce this traffic congestion.

In California, the State's involvement in an intercity rail program with Amtrak has vastly improved passenger rail transportation. Ridership on four intercity rail corridors has mushroomed—from 715,000 passengers per year in fiscal year 1980 to 2.3 million passengers per year in fiscal year 1991, representing more than a 300-percent increase in ridership. Between San Diego and Los Angeles, service has grown to nine round trips a day with the farebox returning over 100 percent of the operating cost of the service.

These examples are just a few that can be cited from around the Nation. In an era where even minor improvements to airport and highway facilities are measured in billions of dollars, the Committee believes that comparatively modest financial support for an underutilized, energy-efficient, safe, and environmentally superior mode of transportation makes abundant sense for the country.

INVESTMENT IN PASSENGER RAIL

A comparison of the Federal appropriation levels for intercity highway, aviation, and railroad infrastructure reveals the unequal manner in which our transportation modes are treated. GAO estimates that Federal appropriations in fiscal year 1993 total $18.43 billion for highway infrastructure, $4.15 billion for aviation infrastructure, and $377 million for railroad infrastructure. The figures for fiscal years 1991 and 1992 are comparable. With so much Federal money available for other modes, and so little for passenger rail, it is no surprise that many States continue to emphasize highway and airport construction, even when high-speed rail makes greater long-term economic and environmental sense.

In an effort to justify the lack of Federal funds going to railroad infrastructure, some have maintained that no Federal financial involvement is necessary because private investors will provide capital for high-speed rail development. The experience in the United States and other countries has proven otherwise; private investment appears unlikely unless the Federal government makes a signficant commitment to implement high-speed rail.

GAO, in testimony earlier this year, noted that plans to introduce high-speed rail have been proposed in more than a dozen locations around the Nation. However, none of these projects has attacted sufficient private investment to move beyond the planning stages. In an effort to determine why the private sector has been unwilling to commit financial resources to these high-speed rail projects, GAO interviewed various members of the financial community. GAO found that investors are hesitant to make significant

investments in high-speed rail because of a lack of experience with high-speed rail systems. Given these perceptions, investment bankers informed GAO and the Committee that without a considerable increase in Federal commitment, major private sector investment is unlikely.

The bill requires the Secretary to identify the maximum practicable private funding for corridor improvements. The Committee believes that private sector participation will be forthcoming for high-speed corridor improvements, commensurate with the specific improvements contemplated, the characteristics of each particular designated corridor, and the commitment of States and local governments. H.R. 1919, which authorizes $1.3 billion in Federal expenditures and requires a substantial commitment of State and local funds, will send a message to private investors that the public sector is serious about investing in high-speed rail.

Each rail corridor in this country is unique; thus, each will require different types and degrees of investments in order to implement high-speed rail service. Under H.R. 1919, the Secretary is given flexibility to determine which corridors represent a wise investment of our limited resources. In reaching this judgment, the Secretary will consider a myriad of factors including: the overall cost of a project; the level of State, local, and private financial commitments; the estimated level of ridership; and the intermodal connections that can be made with the new service. By considering these and other criteria, the Secretary ensures that Federal investment will be targeted only to those projects that will provide demonstrable transportation and economic benefits. Additionally, the bill requires the Secretary to ensure the maximum participation of the private sector in evaluating each corridor. The Committee believes this approach—requiring a true financial partnership of Federal and State or local governments while encouraging maximum private investment—is the best way to initiate a national high-speed rail program.

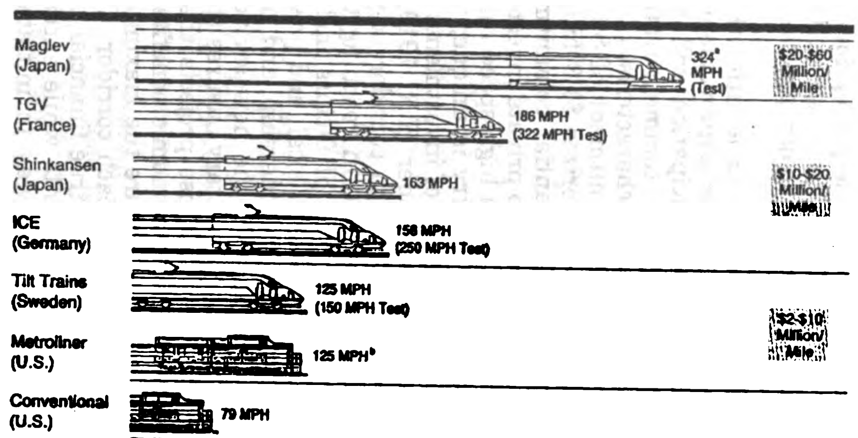
HIGH-SPEED RAIL TECHNOLOGIES

The term "high-speed rail" is frequently used to describe two distinctly different types of technologies. The first involves a range of steel-wheel-on-steel-rail technologies designed to achieve sustained speeds of 125 miles per hour or more. These systems may be implemented either by improving existing tracks, equipment, and rights-of-way—commonly referred to as the "incremental approach"—or by building new systems on dedicated tracks and rights-of-way. H.R. 1919 is limited to "steel-wheel" technologies.

The second technology involves magnetic levitation (maglev). Maglev requires dedicated rights-of-way, different equipment, and electro-magnetic guideways in lieu of traditional tracks. No maglev system is in revenue service today, and although Germany and Japan are testing different maglev prototypes, all projections indicate that actual implementation of such a system is at least a decade away. Additionally, all parties agree that maglev systems will be extremely expensive to develop and implement.

The following chart, prepared by GAO, summarizes attributes of various high-speed rail technologies:

GAO Relative Speeds of High-Speed Rail/Maglev Systems



Notes: a. Germany's "Transrapid 07" considered the most developed Maglev System, has achieved speeds of 270 mph.
b. Amtrak's Metroliner achieves 125 mph only on certain sections of the right-of-way.

The Committee wishes to emphasize that the definition of "high-speed rail" in H.R. 1919 solely encompasses so-called "steel-wheel" technologies. Maglev systems are not included in the definition and thus are not eligible for financial assitance under the Act. Several factors led the Committee to limit the scope of the Act in this manner. First, the Committee notes that the Intermodal Surface Transportation Efficiency Act of 1991 authorizes a national magnetic levitation prototype program. It thus appears premature to authorize Federal financial assistance for the construction of any maglev system prior to the development of the prototype already authorized by law. Second, the Committee believes the costs of implementing maglev systems are excessive. For example, GAO informed the Committee that maglev systems will cost $20–$60 million per mile, while the National Research Council, in a separate study, estimated that a 200-mile maglev system would cost $6.4 billion, or $32 million per mile. Third, the Committee is mindful of the uncertainties that presently accompany the development of maglev technology, as indicated by the following excerpt from a recent review of such technologies by the Office of Technology Assessment (OTA):

> We do not believe the technology is ready to jump to the full-scale operating demonstration that has been proposed in the Surface Transportation Act . . . We can't get to operational testing using a U.S. technology at an acceptable level of risk starting today. The technology is just not ready yet.

Infrastructure improvements that are eligible under the Act will result in ultimate speeds between 125–200 miles per hour, with costs ranging from $2–10 million per mile for incremental upgrades to existing tracks and rights-of-way to $10–20 million per mile for dedicated high-speed systems. Examples of improvements needed to achieve these gains may include grade crossing improvements, track improvements, station construction, signal improvements, conversion of the rail line to electric operation, and high-speed trains, as described briefly below:

Grade-crossing improvements: Elimination and consolidation of highway-rail grade crossings enhance speed and safety; trains no longer have to slow down at crossings and the danger of vehicles on the tracks is removed. Enhanced grade-crossing protection systems also can be beneficial. For example, four-quadrant gate systems are being tested as a way to keep vehicles from moving around flashing barriers and onto railroad tracks.

Track improvements: Continuous-welded track and improved track maintenance standards will be necessary to keep operation and maintenance costs down.

Signal systems: Trains operating at high speeds and with frequent train service may benefit from improved signal, communications, and control systems. For example, advanced train control systems (ATCS) provide mechanisms to detect train position, determine the track on which the train will operate, safeguard track by ensuring that switches and turnouts are set correctly, and communicate operating instructions to the crew.

Electrification: Incremental upgrades, in some regions, may require the conversion of the rail line to electric operation. Electric

propulsion offers advantages of high short-term power, good acceleration, and improved braking. However, electrification is expensive and electric trains are "captive" to the electrified part of any system. Non-electric alternatives, such as lightweight gas turbine-powered trains and dual propulsion locomotives (operational in electric or diesel mode), are being tested and developed; they may offer a way to increase speeds without electrification.

Tilt train: Tilt trains compensate for track curvature, which is a major constraint to achieving higher speeds. These trains have suspension systems that steer into the curves, allowing the train to travel more quickly around them. At the same time, a separate tilting mechanism allows the passengers to remain comfortable despite the additional forces created by taking curves a high velocity. Combining tilt technology with a non-electric locomotive may allow faster speeds on non-electrified track.

GAO's estimate of the cost of these and other incremental upgrades on a hypothetical 200-mile corridor is provided below:

TABLE 1.—*Infrastructure upgrades needed and approximate costs to achieve 125-miles-per-hour speeds on a 200-mile corridor*

[In millions]

Upgrades and other costs:	*Total cost*
Bridge repair/modification	$413.6
Electrification	400.0
Grade crossings	206.7
Added track	166.8
Signaling	89.1
Concrete ties	79.2
Stations	58.0
Continuous welded rail	30.6
Interlockings	13.7
Fencing	4.0
Planning costs and contingencies	584.7
New rolling stock	215.0
Grand total	2,261.3

Sources: Amtrak, and Transportation Research Board, "Special Report 233: In Pursuit of Speed—New Options for Intercity Passenger Transport" (Washington: National Research Council, 1991).

Technologies designed to reach speeds in excess of 150 miles per hour are more costly than incremental upgrades because they require electrification and dedicated rights-of-way. In addition, they require specially designed train systems to ensure compatibility among track, equipment, sensors, communications, and signaling systems. The cost of these systems, as per GAO's estimate, is between $10–$20 million per mile. Current application of these systems includes the Japanese Shinkansen or "bullet train," the French Train á Grand Vitesse (TGV), and the German InterCity Express (ICE), which are in revenue service currently at speeds up to 170 miles per hour, 190 miles per hour, and 160 miles per hour, respectively. Given the significantly higher costs associated with dedicated high-speed systems, the Committee believes that the Secretary will conclude, in most cases, that incremental improvements to existing rail corridors will yield the highest benefits.

H.R. 1919 requires the Secretary to evaluate the unique merits of each potential high-speed rail corridor, to designate meritorious corridors based on various criteria, and to require the development of master plans for each corridor that will detail specific improve-

ments to be made. The Secretary's decision to provide financial assistance for specific improvements ultimately will result in increased train speeds and reduced travel times for each high-speed rail corridor.

AMTRAK AND HIGH-SPEED RAIL

In 1970, the National Railroad Passenger Corporation (Amtrak) was created by the Rail Passenger Service Act to provide intercity rail passenger service. Amtrak currently operates a 24,000-mile national rail passenger network, including the so-called Northeast Corridor (between Washington, D.C., New York City, and Boston).

The Northeast Corridor Improvement Project (NECIP), established under Title VII of the Railroad Revitalization and Regulatory Reform Act (4–R Act), provides the financing mechanism for improvements to the Northeast Corridor. The corridor between Washington, D.C. and New York City, which is owned by Amtrak, is fully electrified, grade-crossing free, and is the only high-speed rail corridor in the United States. The success of this high-speed rail corridor is clear. At speeds up to 125 miles per hour, Amtrak trains now carry 43 percent of all air and rail passengers between Washington, D.C. and New York City, and 70 percent of the passengers from those cities to intermediate cities, making Amtrak the single largest carrier of passengers in the market.

While Amtrak's service on the Northeast Corridor has been extremely successful, the same cannot be said for many other intercity corridors where the competitiveness of passenger rail service has been disappointing. GAO reports that most Amtrak trains travel at speeds below 79 miles per hour, and often average only 50 to 60 miles per hour or less. At these speeds, passenger rail is less competitive with other modes of transportation.

Amtrak's ability to provide competitive service has been hampered by its financial condition, and particularly by its lack of adequate capital funding. In passing the Amtrak Authorization and Development Act last year (P.L. 102–533), the Committee emphasized its concerns about Amtrak's capital deficit (H. Rpt. 102–513):

> During the last ten years, Amtrak has been unable to make the significant investments needed to upgrade and replace its outdated and inefficient equipment fleet. Annual capital assistance from the federal government between 1985 and 1989 averaged less than $32 million. Thus, Amtrak has been exhausting the useful service life of its fleet without replacing or rebuilding it. The major results of this lack of investment are increased operating expenses and related maintenance costs, decreased quality of service, and a large capital deficit. For example, during the 1980s, Amtrak's capital investments totalled almost $1.2 billion, while capital depreciation equalled $1.7 billion, resulting in a capital deficit of $500 million.

Despite Amtrak's funding shortfall, it has made great strides on the Northeast Corridor and has laid the groundwork for future high-speed passenger rail service throughout the Nation. The Committee believes that capital improvements to existing rail corridors served by Amtrak will increase the attractiveness of rail passenger

travel and enable Amtrak to recover a higher percentage of its expenses and reduce its reliance on Federal support. Accordingly, the Committee envisions that Amtrak will be the primary provider of future high-speed rail passenger service. Clearly, however, if Amtrak funding continues to be inadequate, this role will be in jeopardy.

In planning for high-speed passenger rail service, Amtrak has begun to focus on the high-speed rail equipment that will help it deliver high-speed rail service outside of the Northeast Corridor. Amtrak has developed a two-pronged strategy aimed at pushing industry to develop satisfactory high-speed locomotives. First, Amtrak has agreed to participate with the State of New York and the Federal Railroad Administration to develop operating and maintenance data on the latest generation gas turbine engine. Because high-speed non-electric operations may well depend on turbine technology, these tests could prove to be indispensable in the development of a high-speed locomotive for non-electrified rail lines. Second, Amtrak is in the process of procuring 26–30 new high-speed train sets. The technologies currently being evaluated for these trains include tilting capability, good acceleration at higher speeds, integrated internal communications, standardized power and comfort sub-systems, telecommunications and video systems, and high-speed trucks and suspension systems. Following this evaluation, Amtrak plans to integrate these characteristics into a family of high-speed equipment that can be used systemwide. The key technological milestone for these non-electric systems will be the ability of the new locomotives—whether diesel or turbine-powered—to provide extra horsepower for short time periods to generate the high acceleration required to reduce travel time on most routes.

The Committee believes that Amtrak's equipment development program is complementary to the infrastructure improvements to be completed under H.R. 1919. In the end, the high-speed equipment being developed by Amtrak, the infrastructure improvements completed under H.R. 1919, and Amtrak's proven ability to operate high-speed service will assist in the development of high-speed rail service along meritorious corridors.

PRIOR FEDERAL INVOLVEMENT

While H.R. 1919 represents the most comprehensive legislation that relates to high-speed passenger rail, the Committee is mindful of other Federal legislation that has contributed to the development of high-speed rail. For example, in 1965, Congress enacted the High-Speed Ground Transportation Act, expressing the need to develop an efficient, vital transportation network. Under this legislation, the Department of Transportation initiated a variety of research efforts to evaluate and test new forms of high-speed rail transportation. One of the most significant results of these efforts was the development of the Metroliner which was tested at a top speed of 160 miles per hour in 1969, more than ten years before the French TGV system began operation at comparable speeds. The lack of adequate infrastructure, however, prevented operation of this equipment at its full capability, with peak speeds of Metroliner service dropping to 100 miles per hour before the advent of the Northeast Corridor Improvement Project.

In Title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (4–R Act), Congress authorized the Northeast Corridor Improvement Project. Under the authority provided by this law, the Federal government has invested over $2.7 billion to upgrade rail infrastructure between Washington, D.C. and Boston. As noted above, the Northeast Corridor Improvement Project has produced the Nation's only existing high-speed rail service—Metroliner service between Washington, D.C. and New York City.

In 1988, the Federal Railroad Safety Act of 1970 (FRSA) was amended to clarify that the Secretary's authority to establish "rules, regulations, orders or standards for all areas of railroad safety" extends to "all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including high-speed ground transportation systems." In addition, FRSA grants the Secretary authority to conduct necessary "research, development, testing, evaluation, and training for all areas of railroad safety." Under current law, therefore, the Department of Transportation is already vested with considerable authority to evaluate and implement high-speed rail policies. The Federal Railroad Administration, pursuant to this Congressional directive, has been active in conducting research that will lead to the promulgation of appropriate standards and regulations governing high-speed rail operations.

In 1991, Congress passed the Intermodal Surface Transportation Efficiency Act (ISTEA). The focus of ISTEA, as it pertained to high-speed ground transportation, was squarely on magnetic levitation systems. In fact, approximately $725 million was authorized for maglev research and development. As noted earlier, these systems are not eligible under H.R. 1919. However, certain improvements that benefit high-speed rail projects may be eligible under ISTEA, including improvements of grade crossings, terminals, and bridges. Additionally, section 1010 of ISTEA authorized $5 million per year for the "elimination of hazards of railway-highway crossings" in selected high-speed rail corridors. The Secretary was directed to designate up to five high-speed rail corridors (i.e., those corridors "where speeds of 90 miles per hour are occurring or can reasonably be expected to occur in the future") to receive funding for gradecrossing hazard elimination. The corridors designated by the Secretary under this provision were:

1. Eugene-Portland-Seattle-Vancouver, B.C.
2. San Diego-Los Angeles-Bakersfield-San Francisco Bay Area/Sacramento.
3. Chicago-Milwaukee/Detroit/St. Louis.
4. Miami-Tampa/Orlando.
5. Washington-Richmond-Charlotte.

Finally, the Committee notes that section 511 of the 4–R Act was amended by ISTEA to make high-speed rail facilities and equipment eligible for the loan guarantee program authorized under Title V of the 4–R Act.

The Committee believes that H.R. 1919 builds on these and other provisions of existing law (including the Rail Passenger Service Act) and provides a workable framework for identifying, planning, and implementing high-speed rail corridors that will demonstrate a wide range of transportation and other public benefits.

DAVIS-BACON PROTECTIONS

The bill includes a provision that applies the protections of the Davis-Bacon Act, 40 U.S.C. 276a et seq., to construction work undertaken pursuant to H.R. 1919. The Davis-Bacon Act, enacted in 1931, requires that workers on Federally funded construction projects be paid not less than the wage rate prevailing in their local area for work of a similar nature. It was designed to ensure that the Federal government would not use taxpayers' money to undercut local area employment conditions.

The protections of the Davis-Bacon Act are necessary because of the unique nature of the construction industry. First, it is fairly inexpensive for a construction contractor to go into business, because construction requires little fixed capital, and the necessary equipment can usually be leased rather than purchased. Second, the turnover of workers is extremely high, since workers are generally only hired for one particular job and move to a new employer when the work is finished. Finally, there is extremely high unemployment within the industry.

These unique characteristics of the construction industry, combined with the customary competitive bidding process on government projects, creates a situation where a contractor can hire cheap, and perhaps, substandard workers, cut corners on quality and workmanship, and underbid all legitimate contractors for a project. The public entity, forced in most instances to accept the lowest bid, could be compelled to hire such a contractor and accept potentially sub-par workmanship.

By establishing a wage-rate floor, the Davis-Bacon Act provides local builders with a fair chance to compete for government projects on the basis of skill and efficiency, rather than losing this work to outside competitors who could underbid them by paying substandard wages. The government and taxpayers benefit as well, since they are protected from fly-by-night contractors whose substandard wages might attract lower-quality workers and result in shoddy construction work, requiring still more tax dollars for higher repair costs and additional maintenance over the life of the project.

Finally, the Davis-Bacon Act also enhances minority employment opportunities. As they have sought to enter the construction industry in record numbers over the past two decades, minority and women workers have often found themselves the victims of wage-cutting practices. Davis-Bacon protects all workers, union and non-union, from disreputable contractors on Federally funded projects.

CONCLUSION

The Committee has investigated and weighed the relative merits of high-speed passenger rail development by holding various hearings over the course of many years, reviewing numerous reports and studies prepared by a variety of government, private, and academic interests, consulting with State and local governments and other interested parties, and considering the experience of the United States and other countries with high-speed rail systems. Given the proliferating congestion of existing modes of transportation and the desirability of encouraging environmentally sound

and energy-efficient improvements to the Nation's transportation system, the Committee believes that the development of meritorious high-speed rail corridors of between 100 and 500 miles that link major cities will serve a variety of transportation, environmental, energy, safety, and economic goals.

H.R. 1919 authorizes the Secretary to provide financial assistance to State and local governments that demonstrate a willingness and financial commitment to construct high-speed rail improvements. From the initial designation of particular high-speed rail corridors, through the preparation of a master plan for each such corridor, and ultimately to the construction of infrastructure improvements, the legislation establishes an integrated, rational, and cost-effective mechanism for achieving high-speed rail on meritorious corridors. As well, H.R. 1919 leverages scarce Federal financial resources by requiring a financial partnership with State and local governments, encouraging the active participation of the private sector, and building on other Federal transportation programs.

Considering the relative costs of other alternatives and the numerous public benefits expected from the construction of targeted high-speed rail improvements, the Committee believes that enactment of H.R. 1919 is a modest, though critical, step in improving the Nation's intermodal transportation system.

Hearings

The Subcommittee on Transportation and Hazardous Materials held a hearing on H.R. 1919 on April 29, 1993. Testimony was received from the following witnesses: The Honorable Federico Peña, Secretary, United States Department of Transportation; Mr. W. Graham Claytor, Jr., President and Chairman of the Board, National Railroad Passenger Corporation; Mr. Kenneth M. Mead, Director for Transportation Issues, General Accounting Office; Mr. Edwin L. Harper, President and Chief Executive Officer, Association of American Railroads; Mr. Mac A. Fleming, President, Brotherhood of Maintenance-of-Way Employees; Ms. Cindy McKim, Deputy Director for Rail and Transit, California Department of Transportation; Dr. Toye Brown, Deputy Secretary, Massachusetts Executive Office of Transportation and Construction; Mr. Gil Mallory, Rail Branch Manager, Washington State Department of Transportation; and Mr. John Platt, Assistant Director, Ohio Department of Transportation. Additional material was submitted for the record by: the Rail Supply and Service Coalition; Mr. Kirk Brown, Secretary, Illinois Department of Transportation; and Mr. Ross Capon, Executive Director, National Association of Railroad Passengers.

Committee Consideration

On May 27, 1993, the Subcommittee on Transportation and Hazardous Materials met in open session and ordered reported the bill H.R. 1919, as amended, by a voice vote, a quorum being present. On July 27, 1993, the Committee met in open session and ordered reported the bill H.R. 1919, as amended, by a recorded vote of 28 to 16, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, oversight findings and recommendations have been made by the Committee as reflected in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost of administering H.R. 1919 would be no more than the amounts described in the estimate provided by the Congressional Budget Office that accompanies this report:

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 5, 1993.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1919, the High-Speed Rail Development Act of 1993.

Enactment of H.R. 1919 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1919.
2. Bill title: High-Speed Rail Development Act of 1993.
3. Bill status: As ordered reported by the House Committee on Energy and Commerce on July 27, 1993.
4. Bill purpose: H.R. 1919 would authorize the Department of Transportation to provide financial assistance to public agencies for the purpose of developing high-speed rail in designated corridors. It also would authorize funding for research and development of high-speed rail technologies. The bill would authorize appropriations of $1.3 billion for these two purposes over the fiscal years 1994 through 1998. In addition, H.R. 19919 would establish standards for employee protection and for wage rates to be paid for con-

struction projects funded under this bill. Finally, the bill would amend section 601(a)(1)(B) of the Rail Passenger Service Act by changing the authorized appropriation for fiscal year 1994 from $250 million to $205 million and adding a 1995 authorization of $210 million.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998
Authorizations of appropriations:					
High-speed rail financial assistance	125	215	240	290	340
High-speed rail technology development	15	15	15	15	15
Northeast corridor improvement	−45	210			
Total authorizations	95	440	255	305	355
Estimated outlays	25	162	316	326	310

The costs of this bill fall within budget function 400.

Basis of Estimate: CBO assumed that the full amount authorized for the development of high-speed rail will be appropriated prior to the start of each fiscal year. Outlay estimates are based on historical spending rates for similar programs and on information from the Office of Management and Budget.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. CBO estimates that enactment of H.R. 1919 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply.

7. Estimated cost to State and local governments: The bill specifies that the federal assistance can cover up to 80 percent of a designated public agency's administrative costs, no more than 50 percent of master plan preparation costs, and no more than 80 percent of the improvement costs. Therefore, if the full amounts are appropriated, state and local governments would have to cover at least $300 million of project costs.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: John Patterson.

11. Estimate approved by: Paul Van de Water, for C.G. Nuckols, Assistant Director for Budget Analysis.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee believes that the bill will not have any inflationary impact on prices and costs in the operation of the national economy. The bill is designed to upgrade railroad infrastructure. In accomplishing this, the bill likely will create railroad jobs. In addition, the implementation of high-speed rail service will likely decrease our Nation's dependence on foreign oil, decrease traffic congestion at airports and on highways, decrease the emission of harmful pollutants, and decrease travel-related injuries and deaths. Each of these factors should have a positive effect on the cost of travel, thereby contributing to an anti-inflationary effect.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short title

This section provides that the bill may be cited as the "High-Speed Rail Development Act of 1993" (the Act).

Section 2. Findings

This section contains Congressional findings relative to the development of high-speed rail service.

TITLE I—HIGH-SPEED RAIL DEVELOPMENT

This title amends the Railroad Revitalization and Regulatory Reform Act of 1976 (4–R Act), 45 U.S.C. 801 et seq., to create a new title, "Title X—High-Speed Rail Assistance". The Committee is mindful that various provisions of the 4–R Act already authorize the Secretary to undertake capital investments in rail infrastructure improvements, including Title V (railroad rehabilitation and improvement financing) and Title VII (Northeast Corridor project implementation). Following is a discussion of each section under Title X.

Section 1001. Designation of corridors

This section establishes the process by which the Secretary will select "designated corridors", *i.e.,* those corridors that serve two or more major metropolitan areas in the United States where the Secretary determines that high-speed rail offers the potential for cost-effective intercity public transportation. Selection as a designated corridor is a prerequisite for the receipt of Federal financial assistance under the Act.

Subsection (a) provides that designation of a specific corridor by the Secretary must be in response to a petition by the Governor(s) of the State(s) that "substantially encompass a proposed corridor." The Committee intends, with respect to multi-state corridors, that the Secretary will determine which States "substantially encompass" the proposed corridor based on the Secretary's judgment of whether the State's interests are directly implicated by the proposed high-speed rail service. It is not intended, however, that a State with little direct interest in a proposed multi-state corridor will be able to thwart the designation process by refusing to join the petition or refusing to petition on its own behalf. For instance, if a proposed corridor runs through States A, B, and C, making stops only in States A and C, and travelling only a short distance in B, the Secretary may find that States A and C substantially encompass the proposed corridor.

Subsection (b) requires such petition for designation to name a public agency, for each petitioning State, that is authorized by such State to coordinate its high-speed rail program and authorized to receive Federal financial assistance under the Act. In addition, each petition is required to include such information as the Secretary, by regulation, determines to be necessary to evaluate the merits of the corridor. Pursuant to this provision, the Committee intends for the secretary to issue interim regulations promptly to expedite the corridor designation process.

Subsection (c) sets forth specific criteria to be used by the Secretary in selecting designated corridors. In the information provided to the Secretary, the Committee desires the State or group of States to demonstrate that the development of the proposed corridor is a high priority to the State and local governments; that it has been incorporated in State and local transportation planning; that past and proposed State, local, and private commitment to the development of the corridor is identified; and that the project's ability to cover capital costs and operating and maintenance expenses is estimated. Specifically, a decision by the Secretary to designate a particular corridor will be based on the following:

(1) The integration of the designated corridor into Statewide and metropolitan area transportation planning undertaken pursuant to sections 134 and 135 of title 23, United States Code.—The Committee believes that integration of a proposed corridor into State and local transportation plans is significant in three primary respects. First, integration of a proposed corridor in such plans will compel transportation planners to address a wide array of transportation, energy, and environmental policies and issues, including the efficient maximization of the mobility of people and goods and the minimization of transportation-related fuel consumption and air pollution. Second, inclusion of the high-speed rail project in such plans will demonstrate the interest and commitment of State and local governments in the proposed corridor. Finally, the Committee believes that the success of any proposed corridor, as a part of an integrated intermodal transportation network, requires the attention of and analysis by State and local transportation planners to achieve the full range of benefits as well as to overcome institutional and actual barriers in implementing improvements. The Committee recognizes that the development of statewide and metropolitan area planning occurs in cycles and takes a discrete amount of time. For the purposes of this paragraph, if a corridor is not presently identified in such plans, a commitment by the State and metropolitan planning organization that the high-speed rail improvements will be incorporated in the plan during the next revision will suffice.

(2) The interconnection of the proposed high-speed rail service with other parts of the Nation's transportation system, including the relationship of the proposed service to intermodal terminals.—The Committee believes the success of any proposed corridor likely will be related to how the project is integrated with other transportation systems and services. In particular, the project's relation to intermodal terminals will be important in demonstrating its operational and economic viability.

(3) The effect of the proposed high-speed rail service on the congestion of other modes of transportation.—The Committee believes that congestion mitigation in other transportation modes should be a major benefit from high-speed service and should be a component of the Secretary's analysis in designating eligible corridors. States should provide their best estimates of how the proposed high-speed rail service will reduce congestion on highways, airports, and in urban centers.

(4) The effect of the proposed service on State and local governments' efforts to attain compliance with the Clean Air Act.—The

Committee believes that high-speed rail will enhance the ability of State and local governments to comply with requirements of the Clean Air Act by offering a transportation alternative that is more environmentally friendly.

(5) The past and proposed financial commitments and other support of State and local governments and the private sector to the proposed high-speed rail program, including the acquisition of rolling stock.—The Act envisions a true partnership between the Federal government, on the one hand, and State and local governments, on the other, in the development of high-speed rail corridors. The Committee believes the financial commitment of State and local governments is critical to the long-term success of any high-speed rail corridor and intends that the Secretary will require appropriate information to demonstrate such commitment. The Committee recognizes that certain State and local governments already have made substantial investments toward providing high-speed rail service and intends that these past investments and accomplishments, including the acquisition of rolling stock, be given significant weight by the Secretary in making designation and funding determinations.

(6) The estimated level of ridership.—The Committee believes that sound ridership estimates are necessary to evaluate the potential success of any corridor and to determine the benefits of developing high-speed rail systems in specific corridors. The Committee recognizes that more refined ridership estimates will be required in the corridor master plan stage and believes that, during the corridor designation stage, the Secretary should require ridership level estimates to be based on specific criteria to ensure consistent projections among the petitioning corridors so that they can be compared on an equal basis.

(7) The estimated capital cost of the proposal.—The Committee believes the Secretary must evaluate estimated capital costs in considering the designation of any proposed corridor. Such cost estimates relate directly to proposed levels of financial assistance from any source, including Federal financial assistance, as well as to possible long-term cost associated with capital improvements.

(8) The expected ability of the projected revenues of the proposed service, along with any financial commitments of State or local governments and the private sector, to cover capital costs and operating and maintenance expenses.—The Committee believes this information is necessary to evaluate the probable long-term future of any high-speed rail project, including the possible effect such project may have on Amtrak's capital costs and operating and maintenance expenses.

(9) The support and cooperation of any owners and operators of existing rail facilities proposed for improvement in developing the high-speed rail service.—The Committee is aware that the development of high-speed rail service in certain corridors may require the cooperation of the owner of rail facilities (in many instances, a freight railroad) or the operator of facilities (in some cases, Amtrak) and believes the Secretary should make an evaluation of such cooperation in appropriate situations. However, the Committee does not intend, by including such consideration in the Act, to alter in any manner current provisions of the Rail Passenger Service Act

that provide authority for Amtrak to operate on certain rail lines owned by others.

(10) The effect of the proposed high-speed rail service on other transportation services in operation or under development.—The Committee believes that designation of high-speed rail corridors should include consideration of the effect of such service on other transportation services, including highways, airports, freight railroads, transit systems, and other existing or proposed transportation operations.

The Committee is mindful that the petition for designation is the first stage of the corridor-development process; therefore, it is not expected that the Secretary will require individual States to provide an extremely detailed analysis of the criteria in subsection (c). Alternative routes between the two designated endpoints, for example, may be kept open as options. However, as the process moves from petitions for designation, to submission of a corridor master plan, and finally requests for Federal funds for specific elements, the Committee expects the detail and accuracy of such information to increase accordingly.

Subsection (d) provides that the Secretary, upon written request of the Governor(s) of the State(s) that substantially encompass certain corridors that have completed significant high-speed rail planning and construction, will select these corridors as designated corridors under the Act. The corridors covered under this provision are the five high-speed rail corridors selected pursuant to section 1010 of the Intermodel Surface Transportation Efficiency Act of 1991 or any discrete portion thereof, as well as any corridor where regularly scheduled service operates at speeds in excess of 100 miles-per-hour. As with other corridors seeking designation, subsection (d) requires that a public agency must be named for each petitioning State that is authorized by that State to coordinate its high-speed rail program and authorized to receive financial assistance under the Act.

Subsection (e) provides that the Secretary may provide financial assistance for administrative expenses incurred by the public agency charged with development of a particular corridor. The Secretary is required to establish a formula for the allocation of this assistance which may cover up to 80% of such administrative expenses. The purpose of this provision is to encourage States to assure that each public agency implementing high-speed rail service has the necessary resources dedicated to oversee the public agency's responsibilities under the Act.

Section 1002. Corridor master plans

Once a corridor is selected as a designated corridor under section 1001, a corridor master plan must be completed and submitted to the Secretary. Section 1002 establishes the requirement for such master plans.

Subsection (a) directs each applicant (defined as a public agency designated under section 1001 or a group of such public agencies) to prepare and submit a corridor master plan for the Secretary's approval. The master plan will describe the entire process by which high-speed rail service will be achieved and will serve as the basis for identifying specific infrastructure improvements required there-

for. The master plan mandated under the Act is analogous to the program master plan required for the Northeast Corridor Improvement Project under section 708 of the 4–R Act. The corrider master plans will not be static and it is anticipated that they will be updated or revised periodically.

The corridor master plan must delineate each of the separate "elements" that comprise the plan. Each of these elements must represent a discrete portion of the master plan that, when completed, will provide a demonstrable improvement in intercity rail passenger transportation. For example, a demonstrable improvement may be an increase in average speed, a reduction of trip time, or the purchase of a segment of right-of-way. An element is the smallest subpart of a master plan that may be the subject of a financial assistance agreement under section 1003.

The master plan must define the specific infrastructure improvements that make up each element. As an example, an element may be all the activities necessary to permit increased speeds on a certain 30-mile segment of track. This element would then be broken down into such discrete improvements as cross-tie replacement and track surfacing, acquisition and installation of signals, improvements to highway-rail grade crossings, and construction of a multimodal terminal.

Subsection (b) outlines the specific content to be included in the master plan. It is expected that the master plan will be a detailed document, allowing the Secretary to analyze the proposed blueprint for high-speed rail service and to make appropriate funding decisions. The plan will include the following:

(1) Identification of how the proposed high-speed rail service relates to State and metropolitan area transportation plan of the affected States and metropolitan areas.

(2) Identification of the specific elements that comprise the program to achieve the high-speed rail service, including their estimated costs, schedules, timing, and relationship with other transportation projects.

(3) Identification of the transportation benefits expected to be derived from each element, including reductions in trip times and increases in speeds.

(4) Identification of the specific improvements that comprise each element, a representation of the extent to which such improvements are eligible for financial assistance under this title, and an identification of all proposed sources of funding for such specific improvements.—The master plan will be comprehensive and, therefore, include items not eligible for funding under the Act but that are necessary for development of a high-speed rail system. These include items such as grade crossing improvements eligible under 23 U.S.C. 133(b)(4) and the development of multi-modal terminals, bridge construction, and other improvements that may be eligible for Federal financial assistance under other transportation programs.

(5) Identification of anticipated levels of ridership and projections of revenues and expenses associated with the proposed high-speed rail service when completed and for each element undertaken to achieve high-speed service, including estimates of any operating subsidies that would be required and the sources of such subsidies.

(6) An operating plan identifying the proposed schedule and frequency of the high-speed rail service and the coordination of such service with any other rail operations on the corridor.

(7) Such other information as may be required by the Secretary.

Subsection (c) provides tho Secretary with discretionary authority to provide financial assistance of up to 50 percent of the eligible costs associated with preparation of the master plan, as defined in an agreement between the Secretary and the public agency responsible for the development of the high-speed corridor. Such costs may include preliminary engineering and environmental studies.

The Act provides the Secretary wide discretion in the provision of financial assistance for master plan preparation under subsection (c), and later for the provision of financial assistance for specific improvements under section 1003. The flexibility given to the Secretary reflects the Committee's belief that each high-speed corridor will be unique, requiring various degrees of financing at different stages of the planning and implementing processes. While the Committee believes the provision of some financial assistance during the planning phase is warranted, to Committee underscores the need to ensure that the bulk of the limited funding provided in the Act will not be expended merely to aid numerous planning efforts throughout the Nation. The goal of the Act is to complete significant infrastructure improvements on high-speed corridors. If excessive funding goes to planning efforts—which, in turn, may not result in the actual improvement or development of high-speed rail service—then insufficient funding will be left for the actual infrastructure improvements that will increase speeds and reduce travel times. Consistent with other provisions of the Act, subsection (c) limits the amount of Federal financial assistance to 50 percent of the plan preparation costs and, in any event, to do more than the amount provided by State and local governments for plan preparation costs.

Finally, the Committee emphasizes that the provision of assistance by the Secretary under this section will not constitute a commitment to fund any specific improvement. Rather, it is a way for the Secretary to ensure that the master plan developed by the public agency represents a comprehensive program for developing high-speed rail service in a specific corridor and that the program has been organized in such a manner to permit the public agency to apply for financial assistance under section 1003 of the Act.

Section 1003. Financial assistance for designated corridors

The Committee views the development of high-speed rail systems not as Federal projects, but rather as Federally assisted State and local transportation projects. The individual programs will be implemented through a State-Federal partnership with State and local governments assuming the lead role. Accordingly, the Committee does not intend for the Secretary to assist in the development of a high-speed rail project that does not enjoy the support and commitment of State and local governments. Without such support and commitment, no high-speed rail project can be successful.

Section 1003 established the framework by which the Secretary will provide Federal funds for the completion of elements outlined

in the master plan. The Federal financial resources available under the Act are limited. Therefore, to develop high-speed rail service successfully, these limited Federal dollars must be use to leverage the maximum investment possible from the private sector, State and local governments and other Federal programs.

Likewise, due to fiscal constraints, the Committee believes strongly that a substantial State or local commitment to implementing high-speed rail must be a prerequisite to the provision of Federal funds. That commitment will be gauged using various indicators including the willingness of State and local governments to dedicate discretionary Federal funds to high-speed rail projects, the actual financial investment in high-speed rail by State or local governments, and the ability of State and local governments to attract private investment for the corridor project.

Subsection (a) provides authority for the Secretary to provide financial assistance to fund eligible improvements under subsection (c) subject to two exceptions. First, subsection (a)(1) states that no funding may be provided for improvements to the main line of the Northeast Corridor between Washington, D.C. and Boston, Massachusetts. This provision is necessary because the Northeast Corridor has its own separate funding source under Title VIII of the 4–R Act. Second, subsection (a)(2) provides that no financial assistance will be provided for improvements on corridors in a State where the State prohibits the expenditure of State funds for such improvements. The Committee does not believe, given our need to maximize the productivity of all available funds, that the Federal government should be in the business of providing financial assistance for an improvement in any State that by law prohibits the expenditure of State funds for any such improvement. In addition, any provision of Federal funds in such a case, in light of such State's legislative decision not to provide funding, would go beyond the traditional role of the Federal government and would be highly inappropriate.

Subsection (b) authorizes the Secretary to establish appropriate terms, conditions, and procedures for the provision of financial assistance under this section. The Committee contemplates that the Secretary will enter into specific agreements with public agencies that set forth conditions and terms of the provision of financial assistance.

Subsection (c) describes the types of improvements that are eligible for Federal financial assistance under the Act. The eligible improvements include: (1) final engineering and design; (2) site specific environmental analyses and environmental mitigation; (3) acquisition of right-of-way and related property; and (4) acquisition, construction, rehabilitation, upgrading of replacement of roadbed, structures, track, signal and communications systems, electric traction systems, maintenance-of-way facilities, maintenance-of-equipment facilities, private highway-rail grade crossings (including payments to property owners to close such crossings where appropriate), and those portions of terminals and stations directly related to the operation of high-speed rail service.

The acquisition of rolling stock is excluded as an eligible improvement. While the Committee recognizes the importance of rolling stock in establishing high-speed rail service, the Committee be-

lieves financing is available and accessible for rolling stock (as a discrete aspect of high-speed rail improvements) and that limited Federal financial resources instead should be directed primarily to infrastructure improvements.

In addition, subsection (c) provides that improvements that are eligible for funding under other Federal transportation programs will not be eligible under subsection (a). This provision reflects the Committee's belief that the Act should be supplemental to Federal financial assistance available under other existing transportation programs. For example, the elimination of a public grade crossing is eligible for funding under the transportation programs and, therefore, ineligible for funding under the Act. The Committee believes this approach is consistent with the goal of leveraging scare Federal financial resources as well as with national intermodal transportation policies.

Subsection (d) provides that any funding provided under subsection (a) must result in the completion of at least one full element of a program to achieve high-speed service. In many instances, the Committee believes that financial assistance provided by the Secretary will result in a demonstrable increase in train speeds or decrease in travel times; elements, by their definition, will provide such demonstrable results. For corridors using the incremental approach, an element might be the track work or acquisition and construction of a signal system on a specific corridor segment that, combined with grade-crossing improvements, will result in reduced running times. For corridors proposing construction of a new right-of-way, this might be construction of one leg of a multileg system.

Subsection (e) requires the Secretary to ensure, with respect to an element or elements funded under subsection (a), that the maximum practicable private funding is included.

Some argue that private funding should count toward State or local funding required under the Act. The Committee believes the approach in the Act—subtracting private investment from the total cost of an element before determining the applicable Federal, State, and local funding—is the most appropriate and equitable way to ensure State and local commitment, to attract private investment, and to allocate limited Federal resources. The Committee bases this belief on three primary considerations. First, counting private dollars toward State or local funding requirements would increase the level of Federal funding required for any given improvement. Second, it would decrease the financial commitment required of State and local governments and thereby open the door to projects that are not supported fully by such governments (subjecting the Federal government to potential criticism for providing financial assistance for projects that have less than wholehearted financial support from State and local governments). Third, the Committee believes that private entities will contribute greater financial support to projects with the funding requirements currently set forth in the bill. It seems logical that private entities will be more inclined to participate in projects in which Federal, State, and local governments are true partners, as opposed to projects where contributions from private entities—whose short-term and long-term

interests are different from governmental interests in such projects—replace public financial support.

Subsection (f)(1) provides that the Secretary may provide financial assistance under the Act for up to 80 percent of the cost of specific eligible improvements. However, it also provides that no less than 20 percent of the cost of the specific eligible improvements must be provided by State or local funds (which, by definition, do not include funds provided by private sector entities specifically for the purpose of developing a designated corridor).

Further, subsection (f)(2) provides that the Federal financial assistance provided under the Act cannot be greater than the aggregate amount provided for development of the corridor by State and local governments plus funds provided under other Federal transportation programs after April 29, 1993 *i.e.,* the date when H.R. 1919 was introduced. Therefore, while any specific eligible improvement may be funded at an 80 percent level under subsection (f)(1), any award of financial assistance under the Act is ultimately limited under subsection (f)(2) to the amount of State and local funds provided for the development of the corridor plus the amount of funds provided under other transportation programs.

It must be emphasized that the limitation in subsection (f)(2) applies only to funds provided under the Act. To calculate this limitation, one must aggregate the amount of State and local funds provided for the designated corridor plus other amounts provided under other transportation programs. (Note that subsection (c) provides that if a specific improvement is eligible for funding under another Federal transportation program, then it is not eligible for Federal financial assistance under the Act.) In practice, if State and local governments are dedicated to upgrading a designated high-speed rail corridor and are willing to spend discretionary Federal funds from other transportation programs for such improvements, the amount of funds coming from *all* Federal sources may far exceed 50 percent of the total amount provided from all public sources, as shown in the example below.

In deciding how to allocate Federal funds available for grade-crossing eliminations or improvements, most States have established procedures for assigning priorities to specific grade-crossing projects. These priorities are assigned based on an assessment of the relative safety benefits to be derived from such projects. Concerns have been raised that States might use the limited funds earmarked for grade-crossing safety to fund elimination or improvements to grade crossings that are not the most pressing from a safety perspective to take advantage of the availability of high-speed rail program funds. The Committee does not intend for the Act to alter the operation of existing programs that fund grade-crossing eliminations or improvements from earmarked funds or funds set aside for safety purposes. Rather, the Committee believes the Act will provide additional encouragement for States to use discretionary transportation funds for such worthwhile safety purposes.

The following scenarios offer two examples of how specific improvements might be funded under the Act. In the first example, a State proposes to undertake element A of corridor Y which has a total cost of $130 million. This element is comprised of the follow-

ing improvements: $35 million of track work eligible under the Act, $35 million of signal and communications improvements eligible under the Act, $42 million of grade-crossing improvements not eligible under the Act, and $18 million of station improvements not eligible under the Act. A private developer is involved in the station improvement and agrees to fund that improvement as part of the financing agreement. Thus, for purposes of calculating the limitation in subsection (f)(2), the amount provided for station improvements by the private developer will not be counted.

Under subsection (f)(1), the Secretary is authorized to provide financial assistance for up to 80 percent ($28 million) of the eligible track work and for up to 80 percent ($28 million) of the eligible signal and communications improvements, for a maximum possible funding under the Act of $56 million. As well, the Federal financial assistance must be matched by at least 20 percent (a total of $14 million) in State or local funds.

The State also undertakes the $42 million in grade-crossing improvements ineligible under the Act but eligible under the Surface Transportation Program (STP). Under the STP, the Federal Highway Administration pays for 80 percent of the grade-crossing improvements ($33.6 million) with the State paying the 20 percent match ($8.4 million).

The financial assistance provided under the Act is limited under subsection (f)(2) in that it cannot exceed the amount of State and local funds provided for the corridor improvements ($14 million) plus amounts provided under other transportation programs ($56 million, consisting of both Federal and State funds). Thus, in this case, the Act can provide the maximum possible funding because the limitation under (f)(2) equals 80 percent of the cost of eligible improvements under subsection (f)(1) of the Act.

In summary, the $130 million element of this high-speed rail program is funded from the following sources:

Project funding sources—total project

[In millions]

High-speed rail assistance program (43%)	$56.0
Other Federal funds (STP) (26%)	33.6
Non-Federal funds (31%)	40.4
Total (100%)	130.0

Project funding sources—public funds

[In millions]

High-speed rail assistance program (50%)	$56.0
Total Federal funds (80%)	89.6
State or local funds (20%)	22.4
Total (100%)	112.0

In the second example, a State contracts with a private firm to develop a high-speed rail system on a new right-of-way between City A and City B. The total cost of the element is $1 billion, of which $925 million is for work eligible under the Act and $75 million is for multimodel terminal improvements not eligible under the act. The private firm will finance $800 million of the element cost.

Under subsection (f)(1), the Secretary can provide up to 80 percent of the cost of eligible improvements up to the maximum allowable under subsection (f)(2). In this case, 80 percent of the eligible

improvements ($740 million) would far exceed the amounts considered under subsection (f)(2) (*i.e.*, $100 million), so the latter limit would govern.

Under this scenario, the Act could provide up to $100 million with these funds matched by $25 million from State or local funds. In addition, City A and City B could develop their terminals using $60 million of Federal funds available under other transportation programs matched by $15 million in city funds. In summary, the $1 billion element of this high-speed rail project could be funded from the following sources:

Project funding sources—total project

[In millions]

High-speed rail assistance program (10%)	$100.0
Other Federal funds (STP) (6%)	60.0
City and State funds (4%)	40.0
Private funds (80%)	800.0
Total (100%)	1,000.0

Project funding sources—public share

[In millions]

High-speed rail assistance program (50%)	$100.0
Total Federal funds (80%)	160.0
City and State matching funds (20%)	40.0
Total (100%)	200.0

Subsection (g) identifies criteria that the Secretary will consider in deciding how the available funding will be allocated among eligible corridors and improvements to ensure that the maximum benefit is derived from the Federal investment. Due to funding constraints, it will not be possible to fund all eligible improvements in any specific year. In determining how to allocate resources among specific proposed improvements, the Secretary is required to consider how the specific element meets the designation criteria outlined in section 1001(c), the information contained in the relevant corridor master plan (see section 1002(b)), commitments by State and local governments to fund any increases in the operating deficit of Amtrak with respect to its operation over the designated corridor that result from the completion of an element, and any other information that the Secretary deems appropriate.

Subsection (g) requires the Secretary to consider, in making financial assistance decisions, the commitments by the State and local governments to fund increases in the operating deficit of Amtrak over the specific corridor. It is not the intent of the Committee that the State commit itself to cover Amtrak losses as a prerequisite to receiving funding; rather, the Committee simply wants the Secretary to consider any such commitment in making funding determinations. Additionally, given the Act's stated purpose to implement cost-effective high-speed rail service, the Committee does not envision the Secretary providing financial assistance for projects that will increase Amtrak's operating deficit.

Subsection (h) establishes that the Secretary, within 30 months of enactment of the Act, may provide financial assistance under subsection (a) for an element not contained in a corridor master plan under section 1002. After 30 months from enactment, however, every new financial assistance agreement will be limited to

improvements contained within an approved master plan. The Committee recognizes that there will be a transition period once corridors have been designated and while corridor master plans are developed. In order to expedite development of high-speed corridors, the Act allows the Secretary to provide financial assistance for designated corridor improvements that are not part of approved master plans during the first 30 months following enactment. The Federal Railroad Administration's experience in managing the Northeast Corridor Improvement Project has shown that certain specific improvements required for developing high-speed rail service can be identified fairly easily, without the need to complete the comprehensive plan. These might include improvements to track and other structures, highway-rail grade crossing elimination, and installation of signal and communications systems. This provision in no way lessens the import the Committee places on detailed, specific master plans. It is simply a recognition that these master plans will take many months to develop and that high-speed rail improvements should continue to go forward during that time period.

Section 1004. High-speed rail technology development

Section 1004 authorizes the Secretary to undertake research and development of high-speed rail technologies for commercial application in high-speed rail service in the United States. The activities authorized by this section are limited to steel-wheel high-speed rail applications and improvements and do not include any activities relating to the development of magnetic levitation technology. As discussed above, there are a variety of existing, proven steel-wheel high-speed technologies that have been developed and implemented in revenue service in the United States and in other countries. Section 1004 authorizes the Secretary to direct resources for the replication, improvement, adaptation, integration, and assessment of such proven technologies for use in designated corridors. The activities authorized under section 1004 are separate from the activities authorized under section 1036 of the Intermodal Surface Transportation Efficiency Act of 1991.

Section 1005. Buy America requirements

Subsection (a) provides that an applicant receiving financial assistance under section 1003 must ensure that the articles, materials, and supplies purchased with that financial assistance are substantially all of United States manufacture or production. An applicant that fails to meet this requirement will not receive further assistance under section 1003.

Subsection (b) provides certain exemptions to the requirements in subsection (a). The Secretary may grant such an exemption with respect to the purchase of articles, materials, or supplies, or may grant an exemption for any improvement incorporating such articles, materials or supplies, if the Secretary determines that: (1) the application of subsection (a) is inconsistent with the public interest; (2) the cost of imposing the requirements in subsection (a) with respect to such articles, materials, or supplies is unreasonable; (3) such articles, materials, or supplies are not produced or manufactured in the United States in sufficient and reasonably available

quantities or of a satisfactory quality; (4) such articles, materials, or supplies cannot be purchased and delivered in the United States within a reasonable time; or (5) such articles, materials, or supplies are produced or manufactured in a country that the President has determined, in its government procurement contracts, extends national treatment to articles, materials, or supplies produced or manufactured in the United States.

Subsection (c) provides that this section does not apply with respect to an element in any case in which the total cost of the articles, materials, or supplies purchased in connection with such element with financial assistance under section 1003 is less than $1,000,000.

The Committee notes that section 1005, in general, closely parallels the standards already applicable to Amtrak procurement under the Rail Passenger Service Act.

Section 1006. Employee protection

While this legislation should have a positive impact on railroad jobs, there may be limited circumstances where a current railroad employee is furloughed or separated due to Federal financial assistance provided under the Act. Accordingly, appropriate railroad employee protection provisions have been provided in section 1006. The protective conditions required by this section are designed to encourage the maximum use of railroad employees in the performance of work typically done by railroad employees. They also provide a fair and equitable level of benefits to employees who are displaced.

A study of precedents concerning rail labor protections reveals a wide range of protections that vary according to the specific circumstances being addressed. Some prior laws provide greater protection than this section, while some provide clearly less. Each of these precedents, however, was established in response to circumstances different in kind and degree from those faced here; accordingly, the Committee has adopted a new standard of protections to fit this legislation.

Thus, while past precedents provided a useful framework in developing these protections, this Committee was determined to be unfettered by protections provided in these other contexts. Likewise, the Committee does not intend the Act's labor protections to be the standard by which future protections are established and gauged. In the situation created here, where many jobs likely will be created, and where public funds will be spent in providing these protections, the Committee believes that the protections are fair and equitable.

Subsection (a) provides that within 60 days of enactment of this Act, the Secretary must publish in the FEDERAL REGISTER a list of conditions to be imposed to protect the interest of railroad employees who may be adversely affected as a result of financial assistance provided under section 1003. In preparing this information the Secretary must consult with representatives of rail unions, rail carriers, and the States. This consultation process is provided in lieu of the notice and comment process that otherwise might be applicable under the Administration Procedures Act.

Subsection (a) further provides that within this publication by the Secretary, certain protective conditions must be instituted including: (1) a benefit schedule for employees adversely affected as a result of the financial assistance provided under the Act; (2) contracting and subcontracting restrictions that the Secretary determines are appropriate with respect to any person that performs work that is traditionally performed by railroad employees on a disignated corridor and that is funded by financial assistance provided under this Act (notwithstanding any current collective bargaining agreement addressing contracting and subcontracting limitations); and, (3) a requirement that railroad employees who are furloughed or separated (other than for cause) will receive, the maximum extent feasible, priority consideration for re-employment unless they are found to be unqualified. This latter requirement is limited to tasks traditionally performed by railroad employees on that corridor. This priority will include employment with any person that will be operating high-speed rail service on that corridor or performing maintenance, dispatching or signaling work in conjunction with such service and any contractor for construction work that is funded by financial assistance under section 1003. For purposes of these employee protections, a railroad will not be considered to be hiring new employees when it recalls any of its own furloughed employees. Additionally, this subsection is not intended to supersede existing hiring hall or other employment obligations pursuant to a labor agreement under the Railroad Labor Act or the National Labor Relations Act.

Subsection (b) defines the term "deprived of employment". In order to be eligible to receive benefits under this section, an affected employee must satisfy this definition. According to subsection (b), a railroad employee is deprived of employment if: (1) the employee was working on the corridor prior to the provision of financial assistance and is: (A) furloughed or separated (other than for cause) as a result of the financial assistance provided under section 1003; and (B) unable to obtain a position with reasonably comparable duties to that which the employee has performed in the preceding 12 months, and for which the employee is qualified, with any person that will be operating high-speed rail service on that corridor or performing maintenance, dispatching or signaling work in conjuction with such service; or any railroad carrier through the normal exercise of seniroity rights; or in the case of a subordinate official, in addition to the above, any railraod operating in the corridor; or (2) is furloughed or separated as a result of an employee described in paragraph (1)(A) exercising normal seniority rights to obtain or retain his or her employment.

Subsection (c)(1) establishes the necessary components of the benefit schedule for employees who are deprived of employment. The benefit schedule must provide for the payment of the following: (1) subsistence allowance; (2) moving expenses for those employees who must change residence; (3) separation allowances; (4) health and welfare insurance premiums; and (5) any other payment the Secretary considers appropriate.

Subsection (c)(2) limits the payments to an employee under the benefit schedule to:

(1) a maximum period of 18 months, whether consecutive or intermittent, or to a period equal to the employee's length of service, if less than 18 months;

(2) except as provided in subparagraph (C), a maximum amount of 18 months' pay, or monthly pay for a period equal to the employee's length of service, if less than 18 months, reduced by (i) compensation earned for employment during the period referred to in subparagraph (A); and (ii) any benefits received under any unemployment insurance law during the 18-month period referred to in subparagraph (A); and

(3) a lump sum separation allowance, computed as follows, in the event the employee chooses to resign and accept such lump sum settlement in lieu of all other benefits and protection provided under this section:

Years of service	Separation allowance
Less than 1	5 days' pay for each month worked.
1 and less than 2	3 months' pay.
2 and less than 3	6 months' pay.
3 and less than 5	9 months' pay.
5 and over	12 months' pay

Subsection (c)(3) provides that one month's pay for the purposes of paragraph (2)(B) will be the equivalent of one-twelfth of the total compensation received by the employee in the last 12 months of employment in which the employee earned compensation prior to the date on which the employee was deprived of employment, with the monthly amount adjusted to reflect subsequent general wage adjustments, including cost-of-living adjustments where provided for; and for paragraph (2)(C) shall be computed by multiplying by 30 the appropriate daily rate of the position last occupied.

Subsection (d) establishes a special moving expenses rule. Under such rule, a railroad employee who would be considered to be deprived of employment but for paragraph (1)(B) or (2)(B) of subsection (b), and who must make a change of residence in order to obtain or retain active employment will be eligible to receive moving expenses under the benefit schedule under this section, to the extent that such expenses are not payable to or for the employee under applicable collective bargaining agreements or the employer's corporate policy.

Subsection (e) establishes that any employee who receives any payment under the benefit schedule in this section has waived any employee protection benefits provided under any other provision of law, any applicable contract or agreement, or any decision or order of the Interstate Commerce Commission. In addition, any employee electing and claiming benefits under this section must execute a form of release acknowledging and consenting to the waiver described in this paragraph. Nothing in this section will be deemed to determine or otherwise affect the priority, status, or timing of payment of, or the liability for any claim for, employee protection that might have existed in the absence of this section for any employee who elects not to receive benefits under the benefit schedule.

Subsection (f)(1) requires each applicant for financial assistance under section 1003 of the Act to establish a proposed plan to implement these employee protective conditions. This plan must include

a procedure to identify reductions in the work force related to the financial assistance, and an arbitration procedure for resolving disputed labor protection claims which will include the burden of proof falling upon the claimant and the party disputing the claim. A copy of the plan must be provided to the Secretary, the affected rail carriers, and the authorized representatives of employees of such rail carriers.

Subsection (f)(2) establishes that the Secretary must consult with the affected railroads and the authorized representatives of the employees on the designated corridors of such railroads prior to approving any proposed implementing plan. The Secretary cannot approve any plan that does not ensure that the employee-protection conditions established under this section will be fully implemented on the designated corridor.

Subsection (f)(3) requires that the Secretary make it a condition of receiving financial assistance under the Act that the plan approved under this section be implemented.

Subsection (f)(4) provides that the Secretary, no less than annually, must publish in the Federal Register a list of implementing plans that have been approved under this section.

Subsection (g) defines the term "a change of residence" as used in this section as meaning "a change of place of residence occasioned by a change in work location to a place that is more than 30 normal highway route miles from the employee's residence and is also farther from the residence than was the employee's former work location."

Section 1007. Definitions

This section defines various terms used in the Act.

Paragraph (1) defines "applicant" in this bill as a "public agency designated under section 1001(b) or (d)(3) (i.e., the responsible public agency named in the State's petition for designation as a high-speed corridor), or a group of such public agencies, seeking financial assistance under this title for development of a designated corridor."

Paragraph (2) defines "corridor" as "an existing or proposed route for high-speed rail serving two or more major metropolitan areas in the United States." While the high-speed service must reach at least two major metropolitan areas in the United States, this definition in no way precludes the Secretary from designating a designated corridor that extends beyond the borders of the United States.

Paragraph (3) defines "designated corridor" as "a corridor designated by the Secretary under section 1001." Only such "designated" high-speed corridors will be eligible for financial assistance under the Act.

Paragraph (4) defines "element" as "a discrete portion of a program to develop a designated corridor that has a demonstrable intercity ground transportation benefit independent of other improvements to such corridor." As provided in section 1003(d) of the Act, nothing less than an element is eligible for financial assistance under section 1003. Elements, in turn, are divided into individual "improvements"—a term defined in paragraph (7)—but improve-

ments cannot stand on their own for the purpose of obtaining financial assistance under the Act.

Paragraph (5) defines "financial assistance" as including "grants, contracts, and cooperative agreements."

Paragraph (6) states that "high-speed rail" has the meaning given such term under section 511(n) of the 4–R Act. Under section 511(n) "high-speed rail" means "all forms of nonhighway ground transportation that run on rails providing transportation service which is (1) reasonably expected to reach sustained speeds of more than 125 miles per hour; and (2) made available to members of the general public as passengers. Such term does not include rapid transit operations within an urban area that are not connected to the general rail system of transportation." Magnetic levitation (maglev) trains do not satisfy this definition and, therefore, are ineligible for funding under the Act.

Paragraph (7) defines "improvement" as "a discrete activity that contributes to the development of the infrastructure of a designated corridor." Elements, defined in paragraph (4), are made up of individual improvements, some of which are eligible for funding under the Act and some of which are not. The two terms are differentiated by the fact that the completion of an element must result in a demonstrable benefit for high-speed rail that is independent of other improvements to the corridor. Completion of an improvement, on the other hand, will move one closer to completing an element, but the improvement, standing alone, may not have a measurable effect on high-speed rail service. For example, an element may be all the activities necessary to permit increased speeds on a certain 30-mile segment of track. This element would then be broken down into such discrete improvements as cross-tie replacement and track surfacing, acquisition and installation of signals, improvements to highway-rail grade crossings, and construction of a multimodal terminal.

Paragraph (8) defines "railroad employee" as "a nonmanagement railroad employee, including a subordinate railroad official, who is entitled to union representation."

Paragraph (9) defines "rolling stock" as "locomotives and rail passenger cars."

Paragraph (10) defines "State" as "each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States."

Paragraph (11) provides that "the term 'State or local funds' does not include funds provided by private sector entities specifically for the purpose of developing a designated corridor." This definition is intended to avoid the situation where the Federal government and a private sector entity are working to develop a high-speed rail corridor while a State, for whatever reason, has chosen not to contribute funds to such a project. The basis of the program created under the Act is an equal partnership between State and local governments and the Federal government. If a private sector entity could substitute its funds for the State and local funds, then no such partnership exists.

Paragraph (12) defines "United States private business" as "a business entity organized under the laws of the United States, or of a State, and conducting substantial business operations in the United States."

Section 102. Authorization of appropriations

Subsection (a) authorizes appropriations for the National High-Speed Rail Assistance Program in the amount of:

(1) $125,000,000 for fiscal year 1994;
(2) $215,000,000 for fiscal year 1995;
(3) $240,000,000 for fiscal year 1996;
(4) $290,000,000 for fiscal year 1997; and
(5) $340,000,000 for fiscal year 1998.

Subsection (b) authorizes appropriations for high-speed rail technology development in the amount of $15,000,000 for each fiscal year, from fiscal year 1994 through fiscal year 1998, inclusive.

Subsection (c) provides that, of the amounts authorized under subsections (a) and (b), the Secretary may reserve the funds necessary for payment of the administrative expenses incurred by the Secretary in carrying out the Secretary's responsibility under this Act.

Subsection (d) provides that, of the amounts authorized under subsection (a), the Secretary may reserve up to 1 percent for the purpose of providing financial assistance under section 1001(e). Section 1001(e) authorizes the Secretary to provide financial assistance to the public agency responsible for development of a high-speed corridor for up to 80 percent of the administrative expenses incurred by that agency.

Subsection (e) provides that funds made available under this section shall remain available until expended.

Subsection (f) amends section 601(a)(1)(B) of the Rail Passenger Service Act (45 U.S.C. 601(a)(1)(B)) to authorize appropriations for the Northeast Corridor Improvement Project in the amount of $205,000,000 for fiscal year 1994 and $210,000,000 for fiscal year 1995.

TITLE II—LABOR PROTECTION

Section 201. Labor protection

Title II of the Act adds a new section 1008, entitled "Labor Standards" to Title X of the 4–R Act, as amended by the Act.

Section 1008 requires the Secretary to take necessary actions to ensure that the provisions of the Davis-Bacon Act (40 U.S.C. 276a et seq.) apply to construction work undertaken with financial assistance provided under the Act.

The Davis-Bacon Act requires that not less than the locally prevailing wage be paid on contract construction work performed with Federal assistance. It applies to laborers and mechanics employed by contractors and subcontractors who are performing construction work with financial assistance provided under the Act. The Committee believes that the expenditure of Federal funds should not drive down wages in the area receiving those funds. The Davis-Bacon Act protects against such a lowering of wages by shielding local laborers from unfair competition from outside sources. With

such wage protections, the local construction economy will be stabilized; in addition, the quality of work done by the adequately paid laborers will be of higher quality than if completed by lower wage workers.

The Secretary may not approve any financial assistance without first obtaining adequate assurance that the required Davis-Bacon labor standards will be maintained on the construction work. Wage rates provided for in collective bargaining agreements negotiated under and pursuant to the Railway Labor Act will be considered to be in compliance with the Davis-Bacon Act.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

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TITLE X—HIGH-SPEED RAIL ASSISTANCE

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TITLE X—HIGH-SPEED RAIL ASSISTANCE

SEC. 1001. DESIGNATION OF CORRIDORS.

(a) PETITION.—The Governor or Governors of a State or States that substantially encompass a proposed corridor may petition the Secretary for designation under this section.

(b) CONTENTS.—Any petition submitted pursuant to subsection (a) shall include such information as the Secretary determines by regulation to be necessary to evaluate the merits of that corridor. Any such petition shall also designate a public agency, for each petitioning State, that is authorized by the State to be responsible for coordination of activities under the proposed high-speed rail program, and authorized to receive financial assistance under sections 1002 or 1003.

(c) CRITERIA FOR DESIGNATION.—The Secretary is authorized to designate as a designated corridor any corridor where the Secretary determines that high-speed rail offers the potential for cost-effective intercity passenger transportation as part of the Nation's transportation system. Such designation shall be based on such criteria as the Secretary considers appropriate, including—

(1) the integration of the designated corridor into Statewide and metropolitan area transportation planning undertaken pursuant to sections 134 and 135 of title 23, United States Code;

(2) the interconnection of the proposed high-speed rail service with other parts of the Nation's transportation system, including the relationship of the proposed service to intermodal terminals;

(3) the effect of the proposed high-speed rail service on the congestion of other modes of transportation;

(4) the effect of the proposed service on State and local governments' efforts to attain compliance with the Clean Air Act;

(5) the past and proposed financial commitments and other support of State and local governments and the private sector to the proposed high-speed rail program, including the acquisition of rolling stock;

(6) the estimated level of ridership;

(7) the estimated capital cost of the proposal;

(8) the expected ability of the projected revenues of the proposed service, along with any financial commitments of State or local governments and the private sector, to cover capital costs and operating and maintenance expenses;

(9) the support and cooperation of any owners and operators of existing rail facilities proposed for improvement in developing the high-speed rail service; and

(10) the effect of the proposed high-speed rail service on other transportation services in operation or under development.

(d) ADDITIONAL DESIGNATIONS.—(1) The Secretary shall, upon the written request of the Governor or Governors of the State or States that substantially encompass the proposed corridor, designate as a designated corridor—

(A) any intercity rail corridor designated as a high-speed rail corridor by the Secretary under section 104(d)(2) of title 23, United States Code; or

(B) any discrete portion of such a corridor.

(2) The Secretary shall, upon the written request of the Governor or Governors of the State or States that substantially encompass the proposed corridor, designate as a designated corridor any intercity rail corridor, other than the main line of the Northeast Corridor between Washington, District of Columbia, and Boston, Massachusetts, that includes a substantial segment where regularly scheduled rail passenger service operates at speeds in excess of 100 miles per hour as of the date of enactment of the High-Speed Rail Development Act of 1993.

(3) Any request under this subsection shall include the designation of a public agency, for each requesting State, that is authorized by the State to be responsible for coordination of activities under the proposed high-speed rail program, and authorized to receive financial assistance under section 1002 or 1003.

(e) ADMINISTRATIVE EXPENSES.—The Secretary may provide financial assistance to a public agency designated under subsection (b) for up to 80 percent of the administrative expenses incurred by such agency, and determined eligible by the Secretary, in carrying out its responsibilities in connection with the development of a designated corridor. The Secretary shall establish a formula for the allocation of assistance under this subsection.

SEC. 1002. CORRIDOR MASTER PLANS.

(a) REQUIREMENT.—An applicant shall prepare and submit to the Secretary, and may periodically amend, a corridor master plan for a corridor, subject to the approval of the Secretary.

(b) CONTENTS.—A corridor master plan prepared under subsection (a) shall identify a coordinated program of improvements to advance the establishment of high-speed rail service in the corridor,

including those improvements not eligible for financial assistance under this title. Such plan shall include—

(1) identification of how the proposed high-speed rail service relates to State and metropolitan area transportation plans of the affected States and metropolitan areas;

(2) identification of the specific elements that comprise the program to achieve the high-speed rail service, including their estimated costs, schedules, timing, and relationship with other transportation projects;

(3) identification of the transportation benefits expected to be derived from each element, including reductions in trip times and increases in speeds;

(4) identification of specific improvements that comprise each element, a representation of the extent to which such improvements are eligible for financial assistance under this title, and an identification of all proposed sources of funding for such specific improvements;

(5) identification of anticipated levels of ridership and projections of revenues and expenses associated with the proposed high-speed rail service when completed and for each element undertaken to achieve high-speed service, including estimates of any operating subsidies that would be required and the sources of such subsidies;

(6) an operating plan identifying the proposed schedule and frequency of the high-speed rail service and the coordination of such service with any other rail operations on the corridor; and

(7) such other information as may be required by the Secretary.

(c) PLAN PREPARATION ASSISTANCE.—The Secretary, by regulation and to the extent the Secretary considers reasonable, may provide financial assistance to an applicant preparing a corridor master plan for up to 50 percent of the costs associated with preparation of such plan incurred after the date of enactment of the High-Speed Rail Development Act of 1993, including the costs of design, environmental and route selection analysis, and preliminary engineering necessary to support such analyses. The Secretary shall not provide financial assistance under this subsection in an amount that exceeds the amount provided by State and local governments for such preparation costs.

SEC. 1003. FINANCIAL ASSISTANCE FOR DESIGNATED CORRIDORS.

(a) AUTHORITY.—The Secretary may provide financial assistance to an applicant to fund improvements eligible under subsection (c) of this section. No financial assistance shall be provided under this section—

(1) for improvements to the main line of the Northeast Corridor, between Washington, District of Columbia, and Boston, Massachusetts; or

(2) for improvements relating to a designated corridor in a State where the State prohibits the expenditure of State funds for such improvements.

(b) TERMS, CONDITIONS, AND PROCEDURES.—The Secretary shall establish appropriate terms, conditions, and procedures for the provision of financial assistance under this section.

(c) ELIGIBLE IMPROVEMENTS.—Improvements eligible for financial assistance under subsection (a) shall be those improvements, other than the acquisition of rolling stock, that are necessary to facilitate the development of high-speed rail service, including—

(1) final engineering and design;

(2) site specific environmental analyses and environmental mitigation;

(3) acquisition of right-of-way and related property; and

(4) acquisition, construction, rehabilitation, upgrading, or replacement of roadbed, structures, track, signal and communications systems, electric traction systems, maintenance-of-way facilities, maintenance-of-equipment facilities, private highway-rail grade crossings (including payments to property owners to close such crossings where appropriate), and those portions of terminals and stations directly related to the operation of the high-speed rail service.

Improvements that are eligible for funding under other Federal transportation programs shall not be eligible for financial assistance under subsection (a).

(d) MINIMUM FUNDING.—Financial assistance may not be provided under subsection (a) unless such assistance enables the completion of at least one full element of a program to achieve high-speed rail service.

(e) PRIVATE FUNDING.—In providing financial assistance under subsection (a), the Secretary shall ensure that the element or elements for which such assistance is provided include the maximum practicable private funding.

(f) FUNDING PROPORTIONS.—(1) In providing financial assistance under subsection (a), the Secretary may provide financial assistance for up to 80 percent of the cost of specific eligible improvements. No less than 20 percent of the costs of such improvements shall be provided by State or local funds.

(2) Notwithstanding paragraph (1), the Secretary shall not provide financial assistance under subsection (a) relating to a designated corridor in an amount which, in combination with any amounts previously provided under subsection (a) with respect to such designated corridor, exceeds the aggregate amount provided, after April 29, 1993, for the development of the designated corridor by State and local governments, and other Federal transportation programs.

(g) CRITERIA.—In determining whether to provide financial assistance to fund an element under subsection (a), the Secretary shall consider how the element meets the criteria identified in section 1001(c), the information contained in the relevant corridor master plan, commitments by State and local governments to fund any increases in the operating deficit of the National Railroad Passenger Corporation with respect to that Corporation's operation over the designated corridor that result from the completion of the element, and such other information as the Secretary considers appropriate.

(h) EARLY ASSISTANCE.—The Secretary may provide financial assistance under subsection (a) for an element not contained in a corridor master plan prepared under section 1002 only if such financial assistance is provided, with respect to a designated corridor, be-

fore the expiration of 30 months after the date of enactment of the High-Speed Rail Development Act of 1993.

SEC. 1004. HIGH-SPEED RAIL TECHNOLOGY DEVELOPMENT.

(a) AUTHORITY.—The Secretary is authorized to undertake research and development of high-speed rail technologies for commercial application in high-speed rail service in the United States.

(b) ELIGIBLE RECIPIENTS.—In carrying out activities authorized by subsection (a), the Secretary may provide financial assistance to any United States private business, educational institution located in the United States, State or local government or public authority, or agency of the Federal Government.

SEC. 1005. BUY AMERICA REQUIREMENTS.

(a) GENERAL RULE.—Except as provided in subsection (b), an applicant receiving financial assistance under section 1003 shall ensure that the articles, materials, and supplies purchased with such financial assistance are substantially all of United States manufacture or production. An applicant that fails to meet the requirement of this section may not receive further assistance under section 1003.

(b) EXEMPTION.—The Secretary may grant an exemption from this section to an applicant with respect to the purchase of articles, materials, or supplies, or may grant an exemption for any improvement incorporating such articles, materials, or supplies, if the Secretary determines that—

(1) the application of this section is inconsistent with the public interest;

(2) the cost of imposing such requirements with respect to such articles, materials, or supplies is unreasonable;

(3) such articles, materials, or supplies are not produced or manufactured in the United States in sufficient and reasonably available quantities or of a satisfactory quality;

(4) such articles, materials, or supplies cannot be purchased and delivered in the United States within a reasonable time; or

(5) such articles, materials, or supplies are produced or manufactured in a country that the President has determined, in its government procurement contracts, extende national treatment to articles, materials, or supplies produced or manufactured in the United States.

(c) EXCEPTION.—This section shall not apply with respect to an element in any case in which the total cost of the articles, materials, or supplies purchased in connection with such element with financial assistance provided under section 1003 is less than $1,000,000.

SEC. 1006. EMPLOYEE PROTECTION.

(a) ESTABLISHMENT OF PROTECTIVE CONDITIONS.—The Secretary shall, within 60 days after the date of enactment of this title, and after consulting with representatives of rail unions, railroads, and States, issue and publish in the Federal Register a list of conditions to be imposed to protect the interests of railroad employees who may be adversely affected as a result of financial assistance provided under section 1003. Such protective conditions shall include—

(1) a benefit schedule for such employees;

(2) contracting and subcontracting restrictions that the Secretary determines are appropriate with respect to any person that performs work that is traditionally performed by railroad

employees on a designated corridor and that is funded by financial assistance provided under section 1003; and

(3) with respect to those tasks traditionally performed by railroad employees on a designated corridor, a requirement that railroad employees who are furloughed or separated (other than for cause) shall, to the maximum extent feasible, and unless found to be unqualified, have the first right of hire with—

(A) any person that will be operating high-speed rail service on that corridor or performing maintenance, dispatching, or signaling work in conjunction with such service; and

(B) any contractor for construction work that is funded by financial assistance under section 1003.

For purposes of this paragraph, a railroad shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.

(b) DEPRIVED OF EMPLOYMENT.—A railroad employee shall be considered deprived of employment if the employee—

(1) was working on a designated corridor prior to the provision of financial assistance under section 1003 and is—

(A) furloughed or separated as a result of such financial assistance; and

(B) unable to obtain a position with reasonably comparable duties to that which the employee has performed in the preceding 12 months, and for which the employee is qualified, with—

(i) any person that will be operating high-speed rail service on that corridor or performing maintenance, dispatching, or signaling work in conjunction with such service;

(ii) any railroad through the normal exercise of seniority rights; or

(iii) in the case of a subordinate official, in addition to clauses (i) and (ii), any railroad operating in the corridor; or

(2)(A) is furloughed or separated as a result of an employee described in paragraph (1)(A) exercising normal seniority rights to obtain or retain railroad employment; and

(B) is unable to obtain a position with any railroad through the normal exercise of seniority rights.

(c) BENEFIT SCHEDULE.—(1) The benefit schedule under this section shall provide for the payment to employees deprived of employment of—

(A) subsistence allowances;

(B) moving expenses for employees who must make a change in residence;

(C) separation allowances described in paragraph (2)(C);

(D) health and welfare insurance premiums; and

(E) any other payment the Secretary considers appropriate.

(2) The benefit schedule under thie section shall limit the payments under paragraph (1) to—

(A) a maximum period of 18 months for any employee, whether consecutive or intermittent, or for a period equal to the employee's length of service, if less than 18 months;

(B) except as provided in subparagraph (C), a maximum amount of 18 months' pay, or monthly pay for a period equal to the employee's length of service, if less than 18 months, reduced by—

(i) compensation earned from employment during the period referred to in subparagraph (A); and

(ii) any benefits received under any unemployment insurance law during the period referred to in subparagraph (A); and

(C) a lump sum separation allowance, computed as follows, in the event the employee chooses to resign and accept such lump sum settlement in lieu of all other benefits and protection provided under this section:

Years of Service	*Separation Allowance*
Less than 1	*5 days' pay for each month worked*
At least 1 and less than 2	*3 months' pay*
At least 2 and less than 3	*6 months' pay*
At least 3 and less than 5	*9 months' pay*
5 and over	*12 months' pay*

(3) One month's pay for purposes of:

(A) paragraph (2)(B), shall be the equivalent of one-twelfth of the total compensation received by the employee in the last 12 months of employment in which the employee earned compensation prior to the date on which the employee was deprived of employment, with the monthly amount adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for; and

(B) paragraph (2)(C) shall be computed by multiplying by 30 the appropriate daily rate of the position last occupied.

(d) SPECIAL MOVING EXPENSES RULE.—A railroad employee who would be considered to be deprived of employment but for paragraph (1)(B) or (2)(B) of subsection (b), and who must make a change of residence in order to obtain or retain active employment shall be eligible to receive moving expenses under the benefit schedule under this section, to the extent that such expenses are not payable to or for the employee under applicable collective bargaining agreements or their employer's corporate policy.

(e) ELECTION.—(1) Any employee who receives any payment under the benefit schedule under this section shall be deemed to waive any employee protection benefits otherwise available to such employee under—

(A) any other provision of law;

(B) any applicable contract or agreement; or

(C) any decision or order of the Interstate Commerce Commission.

(2) Any employee electing and claiming benefits under the benefit schedule under this section shall be required to execute a form of release acknowledging and consenting to the waiver described in paragraph (1). Nothing in this section shall be deemed to determine or otherwise affect the priority, status, or timing of payment of, or the liability for any claim for, employee protection which might have existed in the absence of this section for any employee who elects not to receive benefits under the benefit schedule.

(f) IMPLEMENTING PLAN.—(1) Applicants for financial assistance under section 1003 shall submit to the Secretary, with a copy to affected railroads and the authorized representatives of the employees on the designated corridors of such railroads, a proposed implementing plan to implement the employee protective conditions established under this section. The plan shall include a procedure to identify reductions in the work force related to the financial assistance, and an arbitration process for resolving disputed labor protection claims, including the burden of proof of the claimant and the party disputing the claim.

(2) The Secretary shall consult with the affected railroads and the authorized representatives of the employees on the designated corridors of such railroads prior to approving any proposed implementing plan under paragraph (1). The Secretary may not approve the plan unless the plan ensures that the employee protective conditions established under this section will be fully implemented on the designated corridor.

(3) In providing financial assistance under section 1003, the Secretary shall include as a condition of such assistance a requirement that the plan approved under this section be implemented.

(4) Not less than annually, the Secretary shall publish in the Federal Register a list of implementing plans that have been approved under this section.

(g) DEFINITION.—As used in this section, the term "a change in residence" means change of place of residence occasioned by a change in work location to a place that is more than 30 normal highway route miles from the employee's residence and also farther from the residence than was the employee's former work location.

SEC. 1007. DEFINITIONS.

For purposes of this title—

(1) the term "applicant" means a public agency designated under section 1001(b) or (d)(3), or a group of such public agencies, seeking financial assistance under this title for development of a designated corridor;

(2) the term "corridor" means an existing or proposed route for high-speed rail serving two or more major metropolitan areas in the United States;

(3) the term "designated corridor" means a corridor designated by the Secretary under section 1001;

(4) the term "element" means a discrete portion of a program to develop a designated corridor that has a demonstrable intercity ground transportation benefit independent of other improvements to such corridor;

(5) the term "financial assistance" includes grants, contracts, and cooperative agreements;

(6) the term "high-speed rail" has the meaning given such term under section 511(n) of this Act;

(7) the term "improvement" means a discrete activity that contributes to the development of the infrastructure of a designated corridor;

(8) the term "railroad employee" means a nonmanagement railroad employee, including a subordinate railroad official, who is entitled to union representation;

(9) the term "rolling stock" means locomotives and rail passenger cars;

(10) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States;

(11) the term "State or local funds" does not include funds provided by private sector entities specifically for the purpose of developing a designated corridor; and

(12) the term "United States private business" means a business entity organized under the laws of the United States, or of a State, and conducting substantial business operations in the United States.

SEC. 1008. LABOR STANDARDS.

The Secretary shall take such action as may be necessary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work undertaken with financial assistance provided under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a et seq.). The Secretary shall not approve any such financial assistance without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Wages rates provided for in collective bargaining agreements negotiated under and pursuant to the Railway Labor Act shall be considered in compliance with the Davis-Bacon Act.

SECTION 601 OF THE RAIL PASSENGER SERVICE ACT

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

(a) CAPITAL ACQUISITION AND CORRIDOR DEVELOPMENT.—

(1) NORTHEAST CORRIDOR.—There are authorized to be appropriated to the Secretary for the benefit of the Corporation for making capital expenditures under title VII of the Railroad Revitalization and Regulatory Improvement Act of 1976 (45 U.S.C. 851 et seq.)—

(A) * * *

[(B) $250,000,000 for fiscal year 1994.]

(B) $205,000,000 for fiscal year 1994, and $210,000,000 for fiscal year 1995.

* * * * * * *

MINORITY VIEWS: H.R. 1919, HIGH-SPEED RAIL DEVELOPMENT ACT

We are very disappointed that the inclusion of a highly controversial and partisan provision in this bill has virtually eliminated what had been strong bipartisan support for an incremental approach to the achievement of high-speed rail passenger service in key corridors around the United States. Without any factual foundation in the hearing or markup of the Subcommittee on Transportation and Hazardous Materials, the Committee has added to H.R. 1919 a provision (Title II) mandating that all construction contracts on any project receiving assistance under the new State-Federal matching program must meet the union-scale "prevailing wage" standard of the Davis-Bacon Act of 1931 (40 U.S.C. 276a et seq.). We have other concerns with the current configuration of H.R. 1919, which will be discussed below, but these would not have jeopardized the bipartisan support for the legislation (subject to further refinement), if the ill-advised Davis-Bacon provision had not been appended to the bill.

I. THE DAVIS-BACON ACT: ENEMY OF SMALL AND MINORITY BUSINESSES

Enacted in 1931, the Davis-Bacon Act requires that all Federal construction contracts amounting to more than $2000 (an amount unchanged since 1931) must include payment of minimum wages as determined by the Secretary of Labor. Until the 1980s, the implementing regulations of the Department of Labor mandated the payment of "union-scale" wages on all contracts in an entire metropolitan area if as few as 30 percent of the area's workers were unionized. In 1982, this threshold was raised to 50 percent.

Although portrayed today as wage protection for skilled construction workers against itinerant low-bidding contractors, the actual purpose of Davis-Bacon at its enactment was the exclusion of minority workers from the construction trades at a time of extensive minority migration to cities outside the South. Since that era, the Davis-Bacon Act has been embraced by organized labor and depicted as an essential protection against "raiding" of local construction markets by low-cost itinerant contractors. The reality is far different.

The Act puts the Department of Labor into the business of surveying and evaluating individual labor markets (and submarkets) in many different crafts and areas of the country for purposes of applying the so-called "prevailing" wage standard that is triggered by 50 percent or higher union membership. So extensive is this task that between 10,000 and 20,000 area and project determinations are issued each year. Understandably, many small and independent construction contractors are reluctant to enmesh themselves in this web of bureaucracy. This is especially critical in an

industry where 80 percent of the firms have nine employees or fewer.

What is the result? The Federal government has created a bifurcated construction industry—one consisting of itinerant firms (usually large ones) specializing in Davis-Bacon contracting, and one consisting of the predominantly small and independent, local-market contractors. Thus, ironically, Davis-Bacon has brought about that which is allegedly was intended to prevent—out-of-area firms "poaching" on smaller local firms. This occurs because only the itinerant Davis-Bacon "specialists" can cope with the burdens imposed by the Act, and because small and independent firms cannot maintain stable labor costs by paying the actual market rates on some projects and the usually highly inflated Davis-Bacon rates on others.

II. THE DAVIS-BACON ACT AND THE HIGH-SPEED RAIL PROGRAM

One of the most constructive aspects of H.R. 1919 is its emphasis on leveraging limitod resources to improve key rail corridors. The key concept is State-Federal matching and pooling of funds (including private funds where available) to make "incremental" improvements on an existing rail corridor in order to achieve eventual high-speed passenger service. Unfortunately this sound approach is undermined and contradicted by the addition of Title II, mandating that all construction work undertaken with financial assistance under the high-speed rail program must be contracted in accordance with Davis-Bacon Act standards.

The serious inherent flaws of the Davis-Bacon "prevailing wage" standard and its relatod bureaucracy were outlined earlier. Applying Davis-Bacon to construction of high-speed rail facilities merely compounds those faults by assuring that both the State and Federal taxpayer get the least transportation infrastructure improvement for the money.

The Davis-Bacon Act applies to all contracts of $2000 or more—a floor that has not been changed in 62 years. Moreover, Title II of H.R. 1919 applies to any construction work undertaken with financial assistance under the bill. Consequently, using even a small amount of Federal assistance for a particular facility—say, a part of a passenger station—would subject the entire construction project to Davis-Bacon requirements. This is turn would probably greatly inflate the cost of constructing any particular project, due to the artificially high "prevailing" wage scale and the additional bureaucratic and administrative costs inherent in Davis-Bacon contract compliance.

In reality, we doubt that these results will be allowed to occur very often. Why? We expect that many States which are serious about investing in a meaningful high-speed rail passenger corridor upgrade program will simply decline to participate in the program created by H.R. 1919. Why would State and local governments want to inflate the costs of the project to the taxpayer and channel the construction business involved to specialized, nonresident firms and away from local independent and minority contractors?

III. LABOR PROTECTION UNDER H.R. 1919

Another addition to the bill, without factual predicate in the hearing or markup record of the Subcommittee on Transportation and Hazardous Materials, is Section 1006, establishing a so-called "labor protection" regime for freight railroad workers displaced by the takeover of an existing freight railroad line for high-speed passenger service. Among the many mandated benefits are up to 12 months' lump-sum severance pay or 18 months of installment payments, plus moving expenses, health insurance premiums, and other benefits. This was characterized by the supporters at the Committee markup as "moderate" compared to the protections elsewhere mandated in the railroad industry.

That much is true. After all, the Interstate Commerce Commission imposes up to 6 years of severance pay for each displaced employee in rail mergers and consolidations! (See 49 U.S.C. 11347.) And Amtrak is subject to virtually the same standard by the terms of its own statute. (See Rail Passenger Service Act, Sec. 405(b), 45 U.S.C. 565(b).) It does not follow, however, that the Congress should impose such burdens on every new form of rail transportation, especially where the basic purpose of the legislation is to make limited State and Federal resources go as far as possible.

Section 1006(a) requires the Secretary of Transportation to prepare and publish "conditions to be imposed to protect the interest of railroad employees who may be adversely affected" by high speed rail projects.

Imposed upon whom? Although not specified by the legislation, all prior forms of railroad "labor protection" have been forced upon the railroad employer of the affected workers. We consider it probable that the same would happen happen here, i.e., that the mandatory protective conditions issued by the Secretary would be made explicitly applicable to the freight railroad employers of any displaced workers. But even if that were not to occur, the economics of any transaction to acquire tracks and facilities for high-speed rail passenger service would reflect the mandated payments in question.

If the freight railroad selling or leasing facilities for passenger operations were explicitly subject to the mandated labor protection payment requirements, the railroad would simply include the anticipated cost of such payments as an element of the price is demanded of the prospective passenger operator. Thus, in the case of publicly supported passenger operations, the State and Federal taxpayers would wind up helping to fund the labor-protection payments.

Even if the payments were not explicitly required to be made by the freight railroad, the results would be the same: the money has to come from somewhere, and the only other source is the prospective passenger operator seeking to acquire needed facilities. Once again, for any publicly supported passenger operator, the taxpayers would foot the bill.

IV. THE LIABILITY PROBLEM

If high-speed rail service is to progress from concept and planning to operational reality, then a sound relationship must be es-

tablished between the passenger operators who will run that service and the freight railroads that own the rights-of-way and facilities on virtually all key rail corridors. Unfortunately, a major stumbling block to forming such a partnership is the issue of tort liability. Beginning in the 1980s, awards of damages against rail carriers escalated rapidly. Given the magnitude of potential damage awards, no foreseeable routine compensation of a freight railroad owner for the use of its tracks and facilities could approach the level necessary to justify the tremendous and potentially disastrous exposure to tort liability that now accompanies passenger-train accidents. For example, a single freight railroad's liability for one 16-fatality Amtrak accident in 1987 was approximately $130 million. That is about 135 percent of Amtrak's annual payments to all freight railroads for access to its entire national route system outside the Northeast Corridor.

The problem requires a legislative solution. Unfortunately, the ability to provide one is not within the exclusive jurisdiction of the Committee on Energy and Commerce. We hope that discussions between this Committee and the Committee on the Judiciary will produce a mutually acceptable provision aimed at solving this critical problem. Until a solution is reached, any program to upgrade potential high-speed rail corridors will remain abstract and contingent at best.

V. CONCLUSION

High-speed rail transportation remains a field of great potential public benefit. Legislation seeking to advance the construction of high-speed rail systems should focus on practical, well-targeted, and efficient use of limited resources. Until the recent addition of the costly and unwarranted Davis-Bacon Act provisions, H.R. 1919 largely reflected that kind of practical approach. We hope that the bill can be returned to such a practical course and considerable bipartisan support. If this is not done, the serious flaws in the newly inserted provisions will jeopardize the legislation's passage. Even if H.R. 1919 is enacted in its present form, its cost-inflating features will probably assure that the rail corridor upgrade program remains largely unutilized.

Carlos J. Moorhead.
Thomas Bliley, Jr.
Jack Fields.
Michael G. Oxley.
Mike Bilirakis.
Dan Schaefer.
Joe Barton.
Alex McMillan.
J. Dennis Hastert.
Cliff Stearns.
Bill Paxon.
Scott Klug.
James Greenwood.
Mike Crapo.

SUPPLEMENTARY MINORITY VIEWS OF HON. MIKE OXLEY

I concur with the Minority Views appended to this report on the serious policy issues raised by the Committee's approval of H.R. 1919 in its present form. The inclusion of mandatory Davis-Bacon Act procurement requirements and the absence of any provision addressing the tort liability of freight railroads for the use of their tracks and facilities in high-speed passenger service render this a seriously flawed piece of legislation. I want to explain in greater detail here the specific nature of my concern about the liability issue, and how I believe it affects other issues of rail policy that will come before the Committee on Energy and Commerce in the near future.

Since the Subcommittee on Transportation and Hazardous Materials first began considering policy issues connected with future high-speed rail transportation, I have been concerned that without any legal protection from massive passenger liability awards, the nation's freight railroads simply could not afford to make available the rights-of-way and other facilities vital to successful high-speed rail passenger service. Experience with Amtrak (which in effect rents tracks and related facilities for virtually all routes outside the Northeast Corridor) shows that contractual indemnity arrangements cannot be relied upon to shield a freight carrier from liability for a tenant passenger carrier's accidents. Moreover, the liability in question—even with a relatively low number of casualties—is of a far greater order of magnitude than the minimal compensation a freight railroad typically receives for the use of its tracks and facilities.

I understand that the resolution of this problem does not lie within the exclusive control of the Committee on Energy and Commerce, and I encourage the pursuit of cooperative efforts with the Committee on the Judiciary in this regard. At the same time, though, we cannot forget that if this problem is not addressed soon, there will be no high-speed rail service in new corridors, because the corridors will simply not be made available by the freight railroads who own them.

The importance of this liability problem may not be fully appreciated in some quarters. For instances, some may view the issue to be less urgent with respect to Amtrak than for other possible operators (public or private) of future high-speed rail service. After all, Amtrak possesses unique powers granted to it under the Rail Passenger Service Act and related laws to compel the availability for its use of privately owned rail facilities—in effect, a condemnation or eminent domain power.

That much is true. But it cannot simply be assumed that Amtrak will have—or is entitled to—monopoly rights over future intercity high-speed rail service. A number of regions are considering and may decide upon independent public operators, a public-private

consortium private contract operators, or a combination of these. The public in these corridors needs a practical solution to the liability problem just as much as the population that is or will be served by Amtrak-operated high-speed service.

Amtrak's statutory condemnation powers to compel the sale or lease of freight railroad facilities were granted more than two decades ago, when Amtrak was created to take over the intercity passenger services of the private-sector freight railroads. Those same condemnation powers will be due for Congressional oversight and review by the end of Fiscal Year 1994, when the next Amtrak reauthorization law must be enacted. I expect the scrutiny to be much closer than at any time in the recent past, because during the next reauthorization cycle, Amtrak must renew all of its access arrangements with the freight railroads. Most of these are embodies in agreements entered into in 1971, and expiring by 1996.

The liability issue we face with respect to the high-speed rail corridor improvement program in H.R. 1919 is merely a variation on the problems that surfaced earlier with respect to the landlord-tenant relationship between the freight railroads and Amtrak governing conventional rail passenger service. Plainly, the higher speeds of advanced passenger trains will aggravate the liability exposure problem in the absence of some legal protection. Therefore, if we do not address the liability problem in the context of H.R. 1919 and any companion legislation from the Senate, we are making Congressional intervention much more likely next year with respect to all aspects of the freight railroad-Amtrak relationship.

Due to my continuing concern that the resolution of the liability issue is essential to any meaningful rail program, I opposed the approval of H.R. 1919 without any liability provision in the Subcommittee on Transportation and Hazardous Materials. When this deficiency went uncorrected by the Committee on Energy and Commerce and was instead compounded by the counterpreductive insertion of costly Davis-Bacon Act procurement requirements, I again concluded that I could not support H.R. 1919 in its present form. This is most unfortunate: I have experienced the advantages of high-speed rail service first-hand. But to take it from concept to reality, we must face the practical problems involved in applying limited resources to a very daunting task. So far, the legislation seems to reflect less and less realism as it moves through the legislative process. A fatally flawed high-speed rail bill is worse than none at all.

MICHAEL G. OXLEY.

SUPPLEMENTAL MINORITY VIEWS BY HON. JACK FIELDS

H.R. 1919 restricts any state from receiving federal funds under the High-Speed Rail Development Act if that state prohibits the expenditure of state funds for improvements contributing to the development of a designated high-speed rail corridor. However, the state of Texas, which does not contribute to the Texas High-Speed Rail Corporation, could still qualify for federal dollars for the planning of its project. My concern with this legislation stems from the fact that many Texans are opposed to the project, and that the Corporation has yet to determine a need for a high-speed rail system through ridership studies.

I am not opposed to innovation or the promotion of high technology transportation systems in the United States. My only concern is that H.R. 1919 would allow high-speed rail projects which are not supported by state governments or taxpayers to be eligible for federal dollars. I reserve the right to modify my position if this concern is addressed.

JACK FIELDS.

ADDITIONAL VIEWS OF HON. RALPH M. HALL AND HON. CRAIG A. WASHINGTON

The High Speed Rail Development Act of 1993, as reported from our Committee, provides an important framework for developing high speed rail in the United States. We strongly support that effort. However, there is an important element missing from the bill: an expressed role for private sector participation which will truly attract private funds into high speed rail programs throughout the country by allowing private funds to serve as a part of or in lieu of state or local matching requirements.

Moreover, in 1991 the Congress undertook a fundamental and widely endorsed decision to level the various federal funding biases among transportation modes in the Intermodal Surface Transportation Efficiency Act (ISTEA). Among the measures to minimize funding biases were provisions in ISTEA, including the high speed rail portions of that bill over which this Committee exercised its jurisdiction, which permit private funds to serve as a part of or in lieu of state match requirements. Unfortunately, the High Speed Rail Development Act releases the policies heretofore undertaken with respect to maximizing federal participation in surface transportation programs. Admittedly, the bill acknowledges some role for the private sector at both Section 2.(8) "the private sector shall participate in funding the development of high speed rail systems;" and at Section 1003(e) under the section designated for funding improvement to high speed rail corridors where ". . . the Secretary shall ensure that the element or elements of which such assistance is provided include the maximum practicable private funding."

But, unlike bills for other surface transportation programs, this bill does not provide any process for the private sector to participate in the program. Given the bill's implicit requirement that a proposed high speed rail project be included in the planning activities of a affected Metropolitan Planning Organization (MPO) and Statewide Planning activities, the bill, appropriately so, seeks to place high speed rail in the same league as other viable transportation alternatives. In addition to the obvious highway and transit activities, many MPO's and statewide planning offices are actively involved in activities affecting a local airport because of the broad economic, social and transportation impact airports have on most large metropolitan areas. A major impact of the ISTEA was to sharpen the integration of transportation improvements into a focused planning process at the lowest practical governmental level of program implementation.

Project selection for transportation solutions to mobility problems is currently performed in such a way that equal criteria are applied to transit or highway alternatives. Airport considerations have, heretofore, been dealt with separately because construction of a new highway or additional lanes to an existing highway was not

a realistic alternative to easing airway congestion. With the bill's proposed introduction of high speed rail into the MPO and Statewide Planning activities, high speed rail becomes a realistic alternative between selecting a highway solution, a high speed rail solution or an airport improvement.

Private funds are eligible to qualify as state matching funds in every other transportation solution (highway, transit or airport) which a MPO or Statewide Planning entity may consider. Provisions of ISTEA and Federal Transit Administration regulations provide such eligibility to highway and transit alternatives. Section 511(a)(12) of the Airport and Airway Improvement Act of 1982 which requires that "all revenues generated by [an] airport" (including concessions or franchise fees from a concessionaire or other businesses located on the airport or whose business is attributable to an airport even though it is not physically located on an airport) must be expended for capital or operating costs of the airport, the local airport system or other facilities substantially related to the actual air transportation of passengers or property. All airport operators use these private revenues generated by the airport as matching funds for airport improvement projects under the FAA AIP program and as matching funds for formula allocations.

Thus, in considering transportation improvements in a planning process, all other considerations being equal, state and local officials are more likely to select a transportation improvement where the state or local financial investment can be off-set in some way. While this off-set is available for highway, transit and aviation alternatives, it is not available for high speed rail solutions.

The corridor master planning activity for high speed rail envisioned in H.R. 1919 is much different than the traditional planning of a public works project that local governments normally undertake. The ability to attract private investment to high speed rail will largely depend on whether the proposed system or proposed improvement can provide an adequate return to private sector investors. Simply stated, if there is not an adequate return, such planning work becomes a high risk venture capital type investment which is unlikely to attract any sustained private investment.

In recent years, federal budgeting constraints have forced many state and local governments to use a greater percentage of their own resources for activities which once had substantial federal participation. The result of these constraints will be that planning activities, in the absence of private support, will be limited to the amount of local funds available. This limitation runs the risk of financing poorly developed, underfunded and, most likely, non-bankable studies to encourage private sector financing in the ultimate construction of a high speed rail corridor.

For these reasons we urge reconsideration of the Committee's decision to exclude private funds from serving as a part of or in lieu of the state or local match before the bill comes before the House. In our view, the hope that this program will leverage an additional $1–2 billion more in private sector funds will not materialize and the possibility to significantly improve train speeds and service in some meaningful way will not occur without encouraging the private sector to participate in this program on the same basis it does in *all* other transportation modes. In an effort to provide truly

intermodal transportation systems in our country, we should continue the policy, begun in ISTEA with the support of this committee, to promote a transportation policy which allows for the selection of the best transportation alternative free of the influence of funding bias.

RALPH M. HALL.
CRAIG A. WASHINGTON.

ADDITIONAL VIEWS OF HON. FRED UPTON AND HON. GARY A. FRANKS

We support the passage of this bill to promote the achievement of high speed passenger rail service despite our opposition to the Davis-Bacon provisions which the bill currently includes. We voted to remove the Davis-Bacon requirements in Committee. While we hope that the Davis-Bacon provisions can and should be removed at some point during further legislative consideration of this bill, we do not believe that this very important high speed rail initiative should be held hostage to the long standing and contentious debate over Davis-Bacon requirements.

Due to the incremental nature of high speed rail development along existing passenger rail corridors which this bill would promote, we see little evidence from our states that the Davis-Bacon provisions, however onerous, will preclude participation in this program. States, unfortunately, have great experience dealing with Davis-Bacon requirements under existing federal highway and transit programs. In fact, state of Connecticut agreements with Amtrak and Metro North already apply Davis-Bacon requirements to rail projects. In Michigan, where high speed rail development will take place on an existing route between Detroit and Chicago which Amtrak operates and partially owns, the grade crossing and track improvement work necessary for higher speeds is done by labor which already meets the Davis-Bacon wage rates. In fact, Amtrak is already directly subject to Davis-Bacon requirements under Section 405(d) of the Rail Passenger Service Act. While Davis-Bacon requirements would likely have a much greater cost inflation on new high speed rail projects starting from scratch, the structure of this bill will more likely encourage the incremental approach to high speed development planned in our states where the impact of Davis-Bacon would not be significant.

While reform of Davis-Bacon is long overdue and its addition to this bill is unfortunate, for the reasons stated above its inclusion does not jeopardize our support for this bill. We also note for the record that we concur with the two other concerns expressed in the Minority Dissenting Views about other labor protections currently in the bill and liability provisions which are not.

The time has clearly come to realize the potential for high speed passenger rail systems in the United States, which foreign countries discovered long ago. Wise investments in technology and transportation infrastructure pay off in economic development, job creation, and higher productivity. High speed rail means more and better options for the travelling public, both business and pleasure, in the areas served by the corridors. High speed rail also provides a more balanced transportation network that reflects growing environmental and energy concerns. We urge the adoption of this bill.

GARY A. FRANKS.
FRED UPTON.

○

103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–260

RELATING TO THE CONSIDERATION OF SENATE AMENDMENTS TO HOUSE AMENDMENTS TO SENATE AMENDMENTS TO H.R. 2493

SEPTEMBER 28, 1993.—Referred to the House Calendar and ordered to be printed

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Mr. GORDON, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 260]

The Committee on Rules, having had under consideration House Resolution 260, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

○

69–008

103D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
103–261

WAIVING POINTS OF ORDER AGAINST THE CONFERENCE REPORT TO ACCOMPANY H.R. 2403

SEPTEMBER 28, 1993.—Referred to the House Calendar and ordered to be printed

Mr. BEILENSON, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 261]

The Committee on Rules, having had under consideration House Resolution 261, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

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69–008

103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–262

PROVIDING FOR CONSIDERATION OF H.R. 1845

SEPTEMBER 28, 1993.—Referred to the House Calendar and ordered to be printed

Mr. HALL of Ohio, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 262]

The Committee on Rules, having had under consideration House Resolution 262 by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

The following is the amendment in the nature of a substitute made in order as an original bill for the purpose of amendment under the five minute rule pursuant to House Resolution 262.

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Biological Survey Act of 1993".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The Department of the Interior needs a coordinated and comprehensive source of information about the nation's biological resources in order to address national, regional, and local natural resource conflicts and to avoid future natural resource problems.

(2) Research, information, and analysis are critical to the management of biological and natural resources on an ecosystem basis.

(3) In recent years, the need for broader and more timely biological information has been readily apparent in the numerous controversies and potential economic dislocations surrounding natural resource management.

(4) Presently, biological research, information, and analysis are dispersed and fragmented among different bureaus in the Department of the Interior.

(b) PURPOSE.—It is the purpose of this Act to establish a National Biological Survey to provide a national focus for research, inventorying, and monitoring of America's biological resources on an ecosystem basis.

SEC. 3. NATIONAL BIOLOGICAL SURVEY.

(a) ESTABLISHMENT.—There is established in the Department of the Interior an office which shall be known as the National Biological Survey.

(b) DIRECTOR.—

(1) IN GENERAL.—The Survey shall be under the supervision of the Director of the National Biological Survey, who shall—

(A) be appointed by the President, by and with the advice and consent of the Senate, from among individuals having expertise in the biological sciences; and

(B) be compensated, subject to appropriation, at the rate provided for level V of the Executive Schedule.

(2) FUNCTIONS.—The Director, under the supervision of the Assistant Secretary and to the extent practicable in cooperation with other Federal, State, and local agencies, Tribal governments, private organizations, and other entities, shall perform the following functions:

(A) Conduct research on biological resources, including plants, fish, wildlife, and their habitat.

(B) Monitor methods by which ecosystems are managed.

(C) Collect and analyze data and information to determine and inventory the distribution, abundance, health, and status and trends of biological resources.

(D) Develop methods for the consistent and systematic collection and analysis of data on ecosystems and their components.

(E) Disseminate information to resource managers, scientists, and the public.

(F) Provide technical assistance within the Department of the Interior and to other Federal agencies, States, Tribal governments, private organizations, and other entities with respect to research, inventory, and monitoring of biological resources.

(G) Establish, in cooperation with other Federal, State, and local agencies, Tribal governments, private organizations, and other entities, a network to assist in collecting and maintaining data concerning the distribution, abundance, health, and status and trends of the Nation's biological resources.

(H) After the date that is 90 days after the date of the enactment of this Act, or such earlier date as may be specified by the Secretary, perform functions under the National Wetlands Inventory Project that were performed before the date of the enactment of this Act by the United States Fish and Wildlife Service under section 401 of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3931), except that this subparagraph shall not be considered to authorize the Director to perform any such function that is completed before that date of enactment.

(c) POWERS.—

(1) IN GENERAL.—In addition to such powers as may be delegated to the Director by the Secretary, and as necessary to carry out the functions enumerated in subsection (b)(2), the Director shall have the authority to—

(A) enter into contracts and cooperative agreements with, and provide grants to, any appropriate Federal, State, and local agencies, Tribal governments, private organizations, and other entities;

(B) accept lands, buildings, equipment, and other contributions of real or personal property, either in cash or in-kind, from public or private sources;

(C) carry out projects in cooperation with other Federal, State, and local agencies, Tribal governments, private organizations, and other entities; and

(D) accept the services of individuals.

(2) ACCEPTANCE OF SERVICES.—Services accepted under paragraph (1)(D) shall be subject to the same authorities and restrictions as are applicable to services accepted by the Secretary under the first section and sections 2 and 3 of the Volunteers in the Park Act (16 U.S.C. 18g–18j).

(d) PEER REVIEW.—The Director shall provide for a scientific peer review process to ensure the validity and reliability of the research conducted and the data collected in carrying out the functions enumerated in subsection (b)(2).

SEC. 4. NATIONAL BIOLOGICAL SURVEY POLICY BOARD.

(a) ESTABLISHMENT.—There is established a National Biological Survey Policy Board to advise the Director on appropriate biological science priorities and to offer guidance to the Director as to how biological science relates to the various missions of the Department of the Interior and as to how the Director and the other bureaus within the Department of the Interior can avoid duplication of activities.

(b) MEMBERS.—The Policy Board shall consist of—

(1) the head of each agency in the Department of the Interior that has a need for biological research or survey activities; and

(2) such other senior officials as may be appointed by the Secretary from other agencies within the Department.

(c) COCHAIRPERSONS.—The Policy Board shall have 2 cochairpersons, consisting of—

(1) the Director of the United States Fish and Wildlife Service; and

(2) another member of the Policy Board who is designated as cochairperson by the Secretary.

SEC. 5. NATIONAL BIOLOGICAL SURVEY SCIENCE ADVISORY COUNCIL.

(a) ESTABLISHMENT.—There is established a National Biological Survey Science Advisory Council to advise the Director on structuring appropriate collaborative relationships for research, inventorying and monitoring of biological resources and on scientific peer review procedures to ensure the validity and reliability of the research conducted and the data collected by the Survey. Section 14(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the National Biological Survey Science Advisory Council.

(b) MEMBERSHIP.—The Council shall consist of not more than 15 members appointed by the Secretary from among individuals who are qualified based on scientific education and experience and who are representatives of executive departments, including—

(1) the Office of Science and Technology Policy;

(2) the Department of the Interior;

(3) the Environmental Protection Agency;

(4) the National Science Foundation;

(5) the National Oceanic and Atmospheric Administration;

(6) the Department of Agriculture;

(7) the Department of Defense; and

(8) State and local agencies, Tribal governments, private organizations, research institutions, and other entities.

(c) COMPENSATION.—An individual may not receive compensation from the United States by reason of their service on the Council.

SEC. 6. SURVEY ACTIVITIES ON PRIVATE AND OTHER NON-FEDERAL LANDS.

(a) COMPLIANCE WITH STATE AND TRIBAL GOVERNMENT LAWS.—The Survey shall comply with applicable State and Tribal government laws, including laws relating to private property rights and privacy.

(b) SURVEY POLICY ON ACCESS TO PRIVATE AND NON-FEDERAL LANDS.—

(1) IN GENERAL.—Within 6 months after the date of the enactment of this Act, the Director shall develop a policy for the Survey to follow in order to help ensure and record compliance with subsection (a).

(2) CONSENT AND NOTICE REQUIREMENTS.—The policy developed under paragraph (1) shall require that before entering non-Federal real property for the purpose of collecting information regarding the property, the Survey shall—

(A) obtain such consent for that entry as is required under State and Tribal government law;

(B) after obtaining such consent, provide notice of that entry to the person from whom consent was obtained under subparagraph (A); and

(C) notify the person from whom consent is required under subparagraph (A) that any raw data collected from the property shall be made available to such person or the owner by the Director at no cost, if requested by such person or the owner.

(3) PROVISION TO CONGRESS.—The Director shall provide the policy developed under paragraph (1) to the appropriate committees of the House of Representatives and the Senate.

(c) SURVEY DEFINED.—In this section, the term "Survey" includes any person that is an officer, employee, or agent of the Survey, including any such person acting pursuant to a contract or cooperative agreement with or any grant from the Survey.

SEC. 7. DEFINITIONS.

As used in this Act—

(1) the term "Assistant Secretary" means the Assistant Secretary for Fish and Wildlife of the Department of the Interior

established under section 3 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742b);

(2) the term "biological resources" means plants, fish, invertebrates, and wildlife, and the terrestrial, aquatic, and marine ecosystems in which they occur;

(3) the term "Director" means the Director of the National Biological Survey appointed under section 3(b);

(4) the term "Secretary" means the Secretary of the Interior;

(5) the term "Survey" means the National Biological Survey established under this Act; and

(6) the term "Tribal government" means the government of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

SEC. 8. CONFORMING AMENDMENTS.

(a) TITLE 5.—Section 5316 of title 5, United States Code, is amended by inserting after the item relating to the Director, United States Fish and Wildlife Service, Department of the Interior, the following:

"Director of the National Biological Survey, Department of the Interior.".

(b) NATIONAL WETLANDS INVENTORY.—Section 401(a) of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3931(a)) is amended—

(1) by striking "the United States Fish and Wildlife Service" and inserting "the National Biological Survey"; and

(2) in paragraph (1) by striking "the Service" and inserting "the National Biological Survey".

(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall take effect on the date that is 90 days after the date of the enactment of this Act, or such earlier date as is specified by the Secretary for purposes of section 3(b)(2)(H).

SEC. 9. AUTHORIZATION AND REPORTS.

(a) CURRENT AUTHORIZATIONS.—

(1) FISCAL YEAR 1994.—For the fiscal year 1994, there are hereby authorized to be appropriated not to exceed $180,000,000 in order to carry out the purposes and provisions of this Act.

(2) FISCAL YEARS 1995, 1996, 1997.—For fiscal years 1995, 1996, and 1997, there are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes and provisions of this Act.

(b) FUTURE AUTHORIZATIONS.—After January 1, 1998, no amounts shall be appropriated to carry out any program, function, or activity of the Survey under this or any other Act unless such amounts have been authorized to be appropriated by one or more Acts of Congress enacted after the date of enactment of this Act.

(c) PERIODIC REPORTS AND PROPOSALS.—

(1) REPORTS.—At the time that the President submits to the Congress an annual budget proposal, the Secretary shall submit to the appropriate committees of the House of Representatives and the Senate a report concerning the utilization of amounts previously appropriated for programs, functions, and activities of the Survey and the proposed utilization of such appropriated amounts during the following fiscal year.

(2) PROPOSALS.—Beginning on January 1, 1997, and not later than January 1 of each second odd-numbered year thereafter, the Secretary shall submit to the Speaker of the House of Representatives and the President of the Senate a proposal for any requested further authorization of appropriations for all programs, functions, and activities of the Survey to be carried out during the 4 full fiscal years beginning on October 1 of the calendar year following the calendar year in which such proposal is submitted.

SEC. 10. RELATIONSHIP TO OTHER LAWS.

Except as provided in sections 3(b)(2)(I), 5(a), and 8, this Act shall not be construed to amend, repeal, supersede, or otherwise affect any other law.

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–263

WAIVING CERTAIN POINTS OF ORDER AGAINST H.R. 3116

SEPTEMBER 28, 1993.—Referred to the House Calendar and ordered to be printed

Mr. FROST, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 263]

The Committee on Rules, having had under consideration House Resolution 263, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

The following is an amendment made in order under House Resolution 263.

THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE WAXMAN OF CALIFORNIA OR HIS DESIGNEE

Page 52, after line 2, insert the following new section:

SEC. 8005A. Title IV of the Department of Defense Appropriations Act, 1993 (Pub. L. 102–396; 106 Stat. 1890) is amended in the 9th proviso under the heading "Research, Development, Test and Evaluation, Army" by striking "six months" and inserting "18 months".

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69–008

103D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
103–264

PROVIDING FOR CONSIDERATION OF H.R. 2351

SEPTEMBER 28, 1993.—Referred to the House Calendar and ordered to be printed

Mr. BEILENSON, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 264]

The Committee on Rules, having had under consideration House Resolution 264, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

The following are the amendments made in order under House Resolution 264.

1. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE CRANE OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 20 MINUTES

Beginning on page 2, strike line 2 and all that follows through line 22 on page 5, and inserting the following:

This Act may be cited as the "Humanities and Museums Amendments of 1993".

SEC. 2. AMENDMENTS RELATING TO THE NATIONAL ENDOWMENT FOR THE HUMANITIES.

(a) FUNDS AUTHORIZED FOR PROGRAM GRANTS.—Section 11(a)(1)(B) of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 960(a)(1)(B)) is amended in the first sentence by striking "$119,900,000" and all that follows through "1993", and inserting "$130,573,000 for fiscal year 1994 and such sums as may be necessary for fiscal year 1995".

(b) FUNDS AUTHORIZED TO MATCH NON-FEDERAL FUNDS RECEIVED.—Section 11(a) of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 960(a)) is amended—

(1) in paragraph (2)(B)—

(A) by striking "1993" the first place it appears and inserting "1995", and

(B) by striking "$12,000,000" and all that follows through "1993", and inserting "$11,963,000 for fiscal year

1994 and such sums as may be necessary for fiscal year 1995", and

(2) in paragraph (3)(B)—

(A) by striking "1993" the first place it appears and inserting "1995", and

(B) by striking "$15,150,000" and all that follows through "1993", and inserting "$14,228,000 for fiscal year 1994 and such sums as may be necessary for fiscal year 1995".

(c) FUNDS AUTHORIZED FOR ADMINISTRATION OF PROGRAMS OF THE NATIONAL ENDOWMENT.—Section 11(c)(2) of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 960(c)(2)) is amended by striking "$17,950,000" and all that follows through "1993", and inserting "$20,727,000 for fiscal year 1994 and such sums as may be necessary for fiscal year 1995".

(d) LIMITATIONS ON TOTAL APPROPRIATIONS AUTHORIZED.—Section 11(d)(2) of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 960(d)(2)) is amended by striking "exceed" and all that follows through the period at the end, and inserting "exceed $177,491,000 for fiscal year 1994.".

SEC. 3. TERMINATION OF THE NATIONAL ENDOWMENT FOR THE ARTS.

(a) REPEALER.—Sections 5, 5A, and 6 of the National Foundation on the Arts and the Humanities Act of 1965 (42 U.S.C. 954, 954a, 955) are repealed.

SEC. 4. CONFORMING AMENDMENTS.

(a) DECLARATION OF PURPOSE.—Section 2 of the National Foundation on the Arts and the Humanities Act of 1965 (42 U.S.C. 951) is amended—

(1) in paragraphs (1) and (6) by striking "arts and the",

(2) in paragraphs (2) and (4) by striking "and the arts",

(3) in paragraphs (5) and (9) by striking "the arts and",

(4) in paragraph (7) by striking "the practice of art and",

(5) by striking paragraph (11), and

(6) in paragraph (12) by striking "the Arts and".

(b) DEFINITIONS.—Section 3 of the National Foundation on the Arts and the Humanities Act of 1965 (42 U.S.C. 952) is amended—

(1) by striking subsections (b), (c), and (f), and

(2) in subsection (d)—

(A) by striking "to foster American artistic creativity, to commission works of art,",

(B) in paragraph (1)—

(i) by striking "the National Council on the Arts or", and

(ii) by striking ", as the case may be,",

(C) in paragraph (2)—

(i) by striking "sections 5(l) and" and inserting "section",

(ii) in subparagraph (A) by striking "artistic or", and

(iii) in subparagraph (B)—

(I) by striking "the National Council on the Arts and", and

(II) by striking ", as the case may be,", and

(D) by striking "(d)" and inserting "(b)", and

(3) by redesignating subsections (e) and (g) as subsections (c) and (d), respectively.

(c) ESTABLISHMENT OF NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES.—Section 4(a) of the National Foundation on the Arts and the Humanities Act of 1965 (42 U.S.C. 953(a)) is amended—

(1) in subsection (a)—

(A) by striking "the Arts and" each place it appears, and

(B) by striking "a National Endowment for the Arts,",

(2) in subsection (b) by striking "and the arts", and

(3) in the heading of such section by striking "THE ARTS AND".

(d) FEDERAL COUNCIL ON THE ARTS AND THE HUMANITIES.—Section 9 of the National Foundation on the Arts and the Humanities Act of 1965 (42 U.S.C. 958) is amended—

(1) in subsection (a) by striking "the Arts and",

(2) in subsection (b) by striking "the Chairperson of the National Endowment for the Arts,",

(3) in subsection (c)—

(A) in paragraph (1) by striking "the Chairperson of the National Endowment for the Arts and",

(B) in paragraph (3)—

(i) by striking "the National Endowment for the Arts", and

(ii) by striking "Humanities," and inserting "Humanities", and

(C) in paragraphs (6) and (7) by striking "the arts and".

(e) ADMINISTRATIVE FUNCTIONS.—Section 10 of the National Foundation on the Arts and the Humanities Act of 1965 (42 U.S.C. 959) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking "in them",

(ii) by striking "the Chairperson of the National Endowment for the Arts and", and

(iii) by striking ", in carrying out their respective functions,",

(B) by striking "of an Endowment" each place it appears,

(C) in paragraph (2)—

(i) by striking "of that Endowment" the first place it appears and inserting "the National Endowment for the Humanities",

(ii) by striking "sections 6(f) and" and inserting "section", and

(iii) by striking "sections 5(c) and" and inserting "section", and

(D) in paragraph (3) by striking "Chairperson's functions, define their duties, and supervise their activities" and inserting "functions, define the activities, and supervise the activities of the Chairperson",

(2) in subsection (b)—

(A) by striking paragraphs (1), (2), and (3), and

(B) in paragraph (4)—

(i) by striking "one of its Endowments and received by the Chairperson of an Endowment" and inserting

"the National Endowment for the Humanities and received by the Chairperson of that Endowment", and

(ii) by striking "(4)",

(3) by striking subsection (c),

(4) in subsection (d)—

(A) by striking "Chairperson of the National Endowment for the Arts and the", and

(B) by striking "each" the first place it appears,

(5) in subsection (e)—

(A) by striking "National Council on the Arts and the", and

(B) by striking ", respectively,", and

(6) in subsection (f)—

(A) in paragraph (1)—

(i) by striking "Chairperson of the National Endowment for the Arts and the", and

(ii) by striking "sections 5(c) and" and inserting "section",

(B) in paragraph (2)(A)—

(i) by striking "either of the Endowments" and inserting "National Endowment for the Humanities", and

(ii) by striking "involved", and

(C) in paragraph (3)—

(i) by striking "that provided such financial assistance" each place it appears, and

(ii) in subparagraph (C) by striking "the National Endowment for the Arts or".

SEC. 5. AMENDMENT TO SHORT TITLE OF THE STATUTE.

Section 1 of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 951 note) is amended by striking "the Arts and".

SEC. 6. TRANSITION PROVISIONS.

(a) TRANSFER OF PROPERTY.—On the effective date of the amendments made by this Act, all property donated, bequeathed, or devised to the National Endowment for the Arts and held by such Endowment on such date is hereby transferred to the National Endowment for the Humanities.

(b) TERMINATION OF OPERATIONS.—The Director of the Office of Management and Budget shall provide for the termination of the affairs of the National Endowment for the Arts and the National Council on the Arts. Except as provided in subsection (a), the Director shall provide for the transfer or other disposition of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with implementing the authorities terminated by the amendments made by this Act.

Page 5, line 23, strike "SEC. 3." and insert "SEC. 7.".

2. The Amendment To Be Offered by Representative Dornan of California or His Designee, Debatable for Not To Exceed 20 Minutes

Page 2, line 14, strike "$119,985,000" and insert "$104,593,000".
Page 3, line 5, strike "$130,573,000" and insert "$107,491,000".
Page 5, line 17, strike "174,593,000" and insert "$104,593,000".
Page 5, line 21, strike "$177,491,000" and insert "$107,491,000".
Page 6, line 3, strike $28,777,000" and insert "$17,267,000".

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3. The Amendment To Be Offered by Representative Gunderson of Wisconsin or Representative Slaughter of New York or Their Designee, Debatable for Not To Exceed 20 Minutes

Page 2, after line 6, insert the following:

(a) Modification of Limitation on Use of Federal Funds.—Section 5(g) of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 954(g)) is amended—

(1) in paragraph (4)(C)—

(A) by inserting "(i)" after "(C)", and

(B) by adding at the end the following:

"(ii) Notwithstanding any other provision of this subsection, the amount allotted to a State for the current fiscal year under this subsection may not be greater than the amount so allotted to such State for the preceding fiscal year if—

"(I) the amount of State funds to be expended for such current fiscal year to carry out this subsection is less than the average annual amount expended by such State during the most recent preceding period of 3 fiscal years to carry out this subsection; and

"(II) the rate of the reduction in the amount of State funds exceeds the rate of reduction in the aggregate of all general fund expenditures to be made by the State in such current fiscal year.", and

(2) in paragraph (5)—

(A) by striking "(5) All" and inserting "(5)(A) Except as provided in subparagraph (B), all", and

(B) by adding at the end the following:

"(B) All amounts allotted under paragraph (3) that are not made available to a State as a result of the operation of subsection (g)(4)(C)(ii) shall be allotted to the remaining States in equal amounts.".

Page 2, line 7, strike "(a)" and insert "(b)".
Page 3, line 8, strike "(b)" and insert "(c)".
Page 4, line 24, strike "(c)" and insert "(d)".
Page 5, line 11 strike "(d)" and insert "(e)".
Page 5, after line 22, insert the following:

(f) Investigation and Report.—Not later than September 30, 1995, the Chairperson of the National Endowment for the Arts shall—

(1) conduct an investigation of State compliance with section 5(g)(4)(C)(i) of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 954(g)(4)(C)(i)), and

(2) submit to the Speaker of the House of Representatives and the President pro tempore, a report containing—

(A) the results of such investigation, and

(B) any information and recommendations as the Chairperson considers to be appropriate.

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–265

U.S. GRAIN STANDARDS ACT AMENDMENTS OF 1993

SEPTEMBER 28, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DE LA GARZA, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H.R. 2689]

[Including Congressional Budget Office cost estimate]

The Committee on Agriculture, to whom was referred the bill (H.R. 2689) to amend Public Law 100–518 and the United States Grain Standards Act to extend through September 30, 1998, the authority of the Federal Grain Inspection Service to collect fees to cover administrative and supervisory costs, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "United States Grain Standards Act Amendments of 1993".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

69–006

SEC. 2. LIMITATION ON ADMINISTRATIVE AND SUPERVISORY COSTS.

Section 7D of the United States Grain Standards Act (7 U.S.C. 79d) is amended—

(1) by striking "inspection and weighing" and inserting "services performed"; and

(2) by striking "1993" and inserting "1998".

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) REAUTHORIZATION.—Section 19 of the United States Grain Standards Act (7 U.S.C. 87h) is amended by striking "during the period beginning October 1, 1988, and ending September 30, 1993" and inserting "1988 through 1998".

(b) LIMITATION.—Such section is further amended by striking "and 17A of this Act" and inserting "7B, 16, and 17A".

SEC. 4. INSPECTION AND WEIGHING FEES; INSPECTION AND WEIGHING IN CANADIAN PORTS.

(a) INSPECTION AUTHORITY.—Section 7 of the United States Grain Standards Act (7 U.S.C. 79) is amended—

(1) in subsection (f)(1)(A)(vi), by striking "or other agricultural programs operated by" and inserting "of"; and

(2) in the second sentence of subsection (i), by inserting before the period at the end "or as otherwise provided by agreement with the Canadian Government".

(b) WEIGHING AUTHORITY.—Section 7A of such Act (7 U.S.C. 79a) is amended—

(1) in the second sentence of subsection (c)(2), by inserting after "shall be deemed to refer to" the following: "'official weighing' or";

(2) in the second sentence of subsection (d), by inserting before the period at the end "or as otherwise provided by agreement with the Canadian Government"; and

(3) in the first sentence of subsection (i), by inserting before the period at the end "or as otherwise provided in section 7(i) and subsection (d)".

SEC. 5. INSPECTION AND WEIGHING PILOT PROGRAM.

(a) INSPECTION AUTHORITY.—Section 7(f)(2) of the United States Grain Standards Act (7 U.S.C. 79(f)(2)) is amended by inserting before the period at the end the following: ", except that the Administrator may conduct pilot programs to allow more than one official agency to carry out inspections within a single geographical area without undermining such objectives".

(b) WEIGHING AUTHORITY.—The second sentence of section 7A(i) of such Act (7 U.S.C. 79a(i)) is amended by inserting before the period at the end the following: ", except that the Administrator may conduct pilot programs to allow more than one official agency to carry out the weighing provisions within a single geographic area without undermining such objectives".

SEC. 6. LICENSING OF INSPECTORS.

Section 8 of the United States Grain Standards Act (7 U.S.C. 84) is amended—

(1) in subsection (a)—

(A) in paragraph (1) of the first sentence, by inserting after "and is employed" the following: "(or is supervised under a contractual arrangement)"; and

(B) in the second sentence, by striking "No person" and inserting "Except as otherwise provided in sections 7(i) and 7A(d), no person";

(2) in the first proviso of subsection (b), by striking "independently under the terms of a contract for the conduct of any functions involved in official inspection" and inserting "under the terms of a contract for the conduct of any functions"; and

(3) in subsection (d)—

(A) by inserting after "Persons employed" the following: "or supervised under a contractual arrangement"; and

(B) by inserting after "including persons employed" the following: "or supervised under a contractual arrangement".

SEC. 7. PROHIBITED ACTS.

Section 13(a)(11) of the United States Grain Standards Act (7 U.S.C. 87b(a)) is amended to read as follows:

"(11) violate section 5, 6, 7, 7A, 7B, 8, 11, 12, 16, or 17A;".

SEC. 8. CRIMINAL PENALTIES.

Section 14(a) of the United States Grain Standards Act (7 U.S.C. 87c(a)) is amended by striking "shall be guilty of a misdemeanor and shall, on conviction thereof, be subject to imprisonment for not more than twelve months, or a fine of not more than $10,000, or both such imprisonment and fine; but, for each subsequent offense subject to this subsection, such person".

SEC. 9. EQUIPMENT TESTING AND OTHER SERVICES.

Section 16 of the United States Grain Standards Act (7 U.S.C. 87e) is amended—

(1) in subsection (b), by striking the third sentence; and

(2) by adding at the end the following new subsections:

"(g) TESTING OF CERTAIN WEIGHING EQUIPMENT.—(1) Subject to paragraph (2), the Administrator may provide for the testing of weighing equipment used for purposes other than weighing grain. The testing shall be performed—

"(A) in accordance with such regulations as the Administrator may prescribe; and

"(B) for a reasonable fee establishing by regulation or contractual agreement and sufficient to cover, nearly as practicable, the estimated costs of the testing performed.

"(2) Testing performed under paragraph (1) may not conflict with or impede the objectives specified in section 2.

"(h) TESTING OF GRAIN INSPECTION INSTRUMENTS.—(1) Subject to paragraph (2), the Administrator may provide for the testing of grain inspection instruments used for commercial inspection. The testing shall be performed—

"(A) in accordance with such regulations as the Administrator may prescribe; and

"(B) for a reasonable fee that is established by regulation on contractual agreement and is sufficient to cover, as nearly as practicable, the estimated costs of the testing performed.

"(2) Testing performed under paragraph (1) may not conflict with or impede the objectives specified in section 2.

"(i) ADDITIONAL FOR FEE SERVICES.—(1) In accordance with such regulations as the Administrator may provide, the Administrator may perform such other services as the Administrator considers to be appropriate.

"(2) In addition to fees authorized by sections 7, 7A, 7B, 17A, and this section, the Administrator shall collect reasonable fees to cover the estimated costs of services performed under paragraph (1) other than standardization, compliance, and foreign monitoring activities.

"(3) To the extent practicable, the fees collected under paragraph (2), together with any proceeds from the sale of any samples, shall cover the costs, including administrative and supervisory costs, of services performed under paragraph (1).

"(j) DEPOSIT OF FEES.—Fees collected under subsection (g), (h), and (i) shall be deposited into the fund created under section 7(j).

"(k) OFFICIAL COURTESIES.—The Administrator may extend appropriate courtesies to official representatives of foreign countries in order to establish and maintain relationships to carry out the policy stated in section 2. No gift offered pursuant to this subsection shall exceed 20 dollars in value."

SEC. 10. VIOLATION OF SUBPOENA.

Section 17(e) of the United States Grain Standards At (7 U.S.C. 87f(e)) is amended by striking "the penalties set forth in subsection (a) of section 14 of this Act" and inserting "imprisonment for not more than 1 year or a fined of not more than $10,000 or both the imprisonment and fine".

SEC. 11. STANDARDIZING COMMERCIAL INSPECTIONS.

Section 22(a) of the United States Grain Standards Act (7 U.S.C. 87k(a)) is amended by striking "and the National Conference on Weights and Measures" and inserting ", the National Conference on Weights and Measures, or other appropriate governmental, scientific, or technical organizations".

SEC. 12. ELIMINATION OF GENDER REFERENCES.

(a) REFERENCES TO HIS.—(1) Section 3 of the United States Grain Standards Act (7 U.S.C. 75) is amended—

(A) in subsection (a), by striking "his delegates" and inserting "a delegate of the Secretary"; and

(B) in subsection (z), by striking "his delegates" and inserting "a delegate of the Administrator".

(2) Sections 4(a), 7(b), 7(e)(2), 12(b), and 13(a)(2) of such Act (7 U.S.C. 76(a), 79(b), 79(e)(2), 87a(b), and 87b(a)(2)) are each amended by striking "his" and inserting "the Administrator's".

(3) Section 5(a)(1) of such Act (7 U.S.C. 77(a)(1)) is amended by striking "his agent" and inserting "the shipper's agent".

(4) Section 9 of such Act (7 U.S.C. 85) is amended in the first sentence by striking "his license" and inserting "the license".

(5) Sections 13(a)(7), 15, and 17(e) of such Act (7 U.S.C. 87b(a)(7), 87d, and 87f(e) are each amended by striking "his" and inserting "the person's".

(6) Section 13(a)(8) of such Act (7 U.S.C. 87b(a)(8)) is amended by striking "his duties" and inserting "the duties of the officer, employee, or inspection personnel".

(b) REFERENCES TO HIM.—(1) Section 8(a) of such Act (7 U.S.C. 84(a)) is amended in the first sentence by striking "him" and inserting "the Administrator".

(2) Section 9 of such Act (7 U.S.C. 85) is amended by striking "him" and inserting "the licensee".

(c) REFERENCES TO HE.—(1) Sections 5(b), 7(a), 7(b), 7(e)(2), 7A(e), 7B(a), 8(c), 8(f), 10(a), 11(a), 11(b)(5), 12(c), and 14(b) of such Act (7 U.S.C. 77(b), 79(a), 79(b), 79(e)(2), 79a(e), 79b(a), 84(c), 84(f), 86(a), 87(a), 87(b)(5), 87a(c), and 87c(b)), are each amended by striking "he" each place it appears and inserting "the Administrator".

(2) Sections 10(b), 13(a)(9), 14(a), and 17A(c) of such Act (7 U.S.C. 86(b), 87b(a)(9), 87c(a), and 87f–1(c)) are each amended by striking "he" and inserting "the person".

(3) Sections 11(B)(1) and 17A(a)(2) of such Act (7 U.S.C. 87(b)(1) and 87f–1(a)(2)) are each amended by striking "he" and inserting "the producer".

SEC. 13. REPEAL OF TEMPORARY AMENDMENT LANGUAGE; TECHNICAL AMENDMENTS.

(a) REPEAL.—Section 2 of the United States Grain Standards Act Amendments of 1988 (Public Law 100–518; 102 Stat. 2584) is amended, in the matter preceding paragraph (1), by striking "Effective for the period October 1, 1988, through September 30, 1993, inclusive, "the" and inserting "The".

(b) TECHNICAL AMENDMENTS.—(1) Section 21(a) of the United States Grain Standards Act (7 U.S.C. 87j(a)) is amended—

(A) by striking "(1)" and

(B) by striking paragraph (2).

(2) Section 22(c) of such Act (7 U.S.C. 87k(c)), is amended by striking "subsection (a) and (b)" and inserting "subsections (a) and (b)".

SEC. 14. AUTHORITY TO COLLECT FEES; TERMINATION OF ADVISORY COMMITTEE.

(a) INSPECTION AND SUPERVISORY FEES.—Section 7(j) of the United States Grain Standards Act (7 U.S.C. 79(j)) is amended by adding at the end the following new paragraph:

"(4) The duties imposed by paragraph (2) on designated official agencies and State agencies described in such paragraph and the investment authority provided by paragraph (3) shall expire on September 30, 1998. After that date, the fees established by the Administrator pursuant to paragraph (1) shall not cover administrative and supervisory costs related to the official inspection of grain.".

(b) WEIGHING AND SUPERVISORY FEES.—Section 7A(l) of such Act (7 U.S.C. 79a(l)) is amended by adding at the end the following new paragraph:

"(3) The authority provided to the Administrator by paragraph (1) and the duties imposed by paragraph (2) on agencies and other persons described in such paragraph shall expire on September 30, 1998. After that date, the Administrator shall, under such regulations as the Administrator may prescribe, charge and collect reasonable fees to cover the estimated costs of official weighing and supervision of weighing except when the official weighing or supervision of weighing is performed by a designated official agency or by a State under a delegation of authority. The fees authorized by this paragraph shall, as nearly as practicable, cover the costs of the Service incident to its performance of official weighing and supervision of weighing services in the United States and on United States grain in Canadian ports, excluding administrative and supervisory costs. The fees authorized by this paragraph shall be deposited into a fund which shall be available without fiscal year limitation for the expenses of the Service incident to providing services under this Act.".

(c) TERMINATION OF ADVISORY COMMITTEE.—Section 21 of such Act (7 U.S.C. 87j) is amended by adding at the end the following new subsection:

"(e) TERMINATION.—The advisory committee shall terminate on September 30, 1998.".

SEC. 15. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) SPECIAL EFFECTIVE DATE FOR CERTAIN PROVISIONS.—The amendments made by sections 2, 3, and 13(a) shall take effect as of the earlier of—

(1) September 30, 1993; and

(2) the date of the enactment of this Act.

Amend the title so as to read:

A bill to amend the United States Grain Standards Act to extend the authority of the Federal Grain Inspection Service to collect fees to cover administrative and supervisory costs, to extend the authorization of appropriations for such Act, and to improve administration of such Act, and for other purposes.

BRIEF EXPLANATION

The bill:

Makes effective through fiscal year 1998 provisions of the United States Grain Standards Act (the "Act") which otherwise expire on September 30, 1993. These provisions include the authorization for an advisory committee, the authority to collect inspection and weighing fees to recover administrative and supervisory costs, the limitation on FGIS administrative expenses, and the authorization of appropriations for standardization and compliance activities, monitoring in foreign ports of grain exported from the United States, and other necessary expenses of the agency;

Permits the Administrator to conduct pilot programs under which more than one designated official inspection and weighing agency may serve a single geographical area;

Increases penalties for willful violations of certain provisions of the Act; and

Provides the Administrator with additional tools to enhance the Service's efficiency and effectiveness.

PURPOSE AND NEED

The Federal Grain Inspection Service (FGIS) was mandated by Congress in 1976 as the agency responsible for implementing and administering the official United States grain standards programs. The primary responsibilities of FGIS include the inspection and weighing of grain exported from United States export facilities and the designation of State and private entities to perform inspection and weighing services at interior locations under the supervision of FGIS.

Grain moving in domestic markets can be weighed or inspected upon request by one of the 72 agencies designated by FGIS to perform this service. The work is performed on a fee basis which is paid by the entity requesting the service.

The United States Grain Standards Act (the "USGS Act") requires that export shipments of grain must be officially weighed and inspected. These services are also performed on a fee-basis.

The authority of FGIS to collect user fees which may include the administrative and supervisory costs of the agency for these services expires on September 30, 1993. The authorities for the Secretary of Agriculture to invest the user fees in interest-bearing accounts and to maintain an advisory committee to advise the Ad-

ministrator on implementation of the USGS Act also expire as does the authority of FGIS to collect fees for supervising designated agencies and the authorization for appropriations to cover standardization, compliance, and foreign monitoring costs.

The amendments made by this legislation will extend through September 30, 1998, the existing authorities for appropriations and the collection and investment of user fees, and the limitation on administrative and supervisory costs that may be covered by user fees.

H.R. 2689, as amended, contains several provisions which will enable FGIS to cut their operating costs and streamline agency operations. While the agency has undertaken a number of actions to decrease the cost of export inspections and reduce staff, these additional provisions will provide further flexibility. The Committee notes that the cost of FGIS export inspections has gone from 24 cents per metric ton in 1987 to 22 cents per metric ton in 1992. The FGIS work force has also dropped during that same time from nearly 1,000 employees, down to 600 at the end of calendar year 1992.

FGIS grain licensing authority is expanded by the legislation beyond only employees of official inspection agencies to include contract inspectors. H.R. 2689 provides FGIS with broader authority to make use of its unique capabilities in the weighing of commodities and other items. The bill allows FGIS to test weighing equipment used for purposes other than weighing grain, and to test grain inspection instruments used for commercial inspections, on a fee basis. Under the bill, other similar types of activities will be allowed on a fee basis if the need arises and the Administrator deems it appropriate. These provisions are designed to help the agency keep its costs under control and provide needed services that are not available through the private sector.

H.R. 2689 prohibits the use of official inspection fees, collected by federally designated State agencies, to pay for agricultural programs not related to inspection and weighing duties.

The legislation expands the authority of FGIS to work with the Canadian government in carrying out official inspections in Canadian ports. This eliminates the need for FGIS personnel to be stationed in Canadian ports on a full-time basis.

FGIS is given the authority to conduct pilot programs where more than one official designated agency may offer services within the same territory for interior location inspections. The Committee believes this provision will alleviate the criticisms in a recent General Accounting Office report (RCED–93–147) finding wide variations in fees charged in certain inspection areas by designated inspection agencies.

H.R. 2689 increases the penalty for violations of the USGS Act, making willful violations of the law, such as deceptive loading and manipulation and falsification of weights, felonies rather than misdemeanors. Conviction will result in a penalty of up to 12 months imprisonment or a $10,000 fine, or both. The Committee finds that stronger penalties are necessary to deter individuals or companies from violating the law. The current requirement for a quarterly report to Congress on the official complaints received by the FGIS is

eliminated. Congress will continue to receive a summary of official complaints in the annual report.

The Administrator of FGIC is given the authority to use FGIS funds to purchase gifts of little or no intrinsic value, with a statutory limit of $20, to extend as courtesies to official foreign visitors. The FGIS research facility in Kansas City, as well as the various export facilities, are often visited by foreign individuals and government officials involved in grain merchandising who want to learn more about the United States grain inspection system. As is often the custom in foreign countries, the hosts are given a small token of appreciation for the time spent with the visitors. FGIS currently has no authority to purchase small gifts and FGIS employees are forbidden from utilizing personal funds to make this type of purchase.

H.R. 2689 authorizes FGIS to work with appropriate governmental, technical or scientific organizations in addition to the National Institute on Science and Technology (NIST) and the National Conference on Weights and Measures to promote greater uniformity in commercial grain inspection results.

The legislation also removes any gender specific language from the USGS Act.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title and table of contents

Section 1(a) of the bill provides a short title.

Section 2(b) of the bill provides a table of contents.

Section 2—Limitation on administrative and supervisory costs

Section 2 of the bill amends section 7D of the United States Grain Standards Act (the "Act") to expand the application of the current limitation on administrative and supervisory costs to include all such costs for all services performed.[1]

Section 2 of the bill also makes the provisions contained in section 7D of the Act effective for fiscal years 1993 through 1998.[2]

Section 3—Authorization of appropriations

Section 3(a) of the bill amends section 19 of the Act to extend for 5 years the authorization for appropriations of funds necessary for expenses to carry out the Act other than those covered by fees collected under the Act.[3]

Section 3(b) of the bill makes a conforming change to section 19 to include references to the new fees authorized under the bill among the fee provisions listed in that section.

The Committee directs the Administrator to include a comprehensive plan to maximize the efficiency and effectiveness of the Federal Grain Inspection Service in the annual fiscal year 1994 report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Rep-

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[1] Current law limits administrative and supervisory costs of inspection and weighing to no more than 40 percent of total costs. The bill applies the 40 percent limitation to all administrative and supervisory costs.

[2] These provisions currently expire on Sept. 30, 1993.

[3] The current authorization expires on Sept. 30, 1993.

resentatives required by section 17B of the United States Grain Standards Act.

Section 4—Inspection and weighing fees; inspection and weighing in Canadian ports

Section 4(a)(1) of the bill amends section 7(f)(1)(A)(vi) of the Act to eliminate the authority of State or local agencies designated, or otherwise authorized, by the Administrator as official inspection agencies to use fees collected by the agencies to pay for agricultural programs operated by the agencies other than inspection activities.

Section 4(a)(2) of the bill amends section 7(i) of the Act to authorize the performance of official inspections of United States export grain in Canadian ports by persons provided for in agreements with the Canadian government.[4]

Section 4(b) of the bill amends section 7A(d) of the Act to authorize the performance of official weighing of United States export grain in Canadian ports by persons provided for in agreements with the Canadian government.[5]

Section 5—Inspection and Weighing Pilot Program

Section 5(a) of the bill amends section 7(f)(2) of the Act to authorize FGIS to conduct pilot programs to study the feasibility of allowing more than one official agency to perform inspection services within the same geographic area without undermining the Act.

Section 5(b) of the bill amends section 7A(i) of the Act to authorize FGIS to conduct pilot programs to study the feasibility of allowing more than one official agency to perform weighing services within the same geographic area without undermining the Act.

Section 6—Licensing of inspectors

Section 6 of the bill amends section 8 of the Act to authorize FGIS to issue licenses to perform official inspection and official weighing functions to individuals supervised under a contractual arrangement with an official agency or a State agency delegated authority under the Act.[6]

Section 7—Prohibited acts

Section 7 of the bill amends section 13(a)(11) of the Act by expanding the list of "prohibited acts" enumerated in the Act which, if violated, subject the violator to criminal penalties under the Act. Section 7 of the bill adds to the list all of the provisions of section 7 (Official Inspection Authority), section 7B (Testing of Equipment), and section 16 (General Authorities) of the Act.

Section 8—Criminal penalties

Section 8 of the bill amends section 14(a) of the Act to increase the severity of the offense to a felony and the penalty to up to 5

[4] Section 7(i) of the Act currently requires official inspections to be performed by employees or contractors of FGIS.

[5] Section 7A(d) of the Act currently requires official weighing to be performed by employees or contractors of FGIS.

[6] Section 8 of the Act currently authorizes FGIS to issue licenses only to employees of official agencies or delegated State agencies.

years imprisonment or a fine of not more than $20,000, or both for initial violations of the list of prohibited acts under the Act.[7]

Section 9—Equipment testing and other services

Section 9(1) of the bill amends section 16 of the Act to eliminate the quarterly report by FGIS to Congress on official complaints. Congress will continue to receive a summary of official complaints in the annual report.

Section 9(2) of the bill adds 5 new subsections to section 16 of the Act that provide new authority to FGIS.

New section 16(g) authorizes the Administrator to test weighing equipment used for purposes other than weighing grain, and to charge a reasonable fee established by regulation or contractual agreement to cover the expenses of the testing.

New section 16(h) authorizes the Administrator to test grain inspection instruments used for commercial inspections and to charge a reasonable fee established by regulation or contractual agreement to cover the exponses of the testing.

New section 16(i) authorizes the Administrator to perform services considered appropriate by the Administrator other than those services specifically authorized under the Act and to charge a reasonable fee to cover the expenses of those services performed other than standardization, compliance, and foreign monitoring activities.

New section 16(j) requires the fees collected under the new sections 16 (g), (h), and (i) to be deposited into the fund created under section 7(j) of the Act.

New section 16(i) authorizes the Administrator to extend "appropriate courtesies" to foreign officials and visitors in order to establish and maintain relationships to carry out the policies of the Act, but limits the value of any gift offered or received under this section to no more than $20 in value.

The Federal Grain Inspection Service quite often gives foreign visitors extensive explanations or briefings on its functions and responsibilities in the United States. FGIS also travels to different countries to learn about other inspection and grain grading systems. As a gesture of gratitude, the foreign visitors or foreign hosts usually bestow small gifts on FGIS personnel. However, the law precludes FGIS from purchasing small gifts to give in return. In fact, the law even prohibits FGIS personnel from buying gifts using their own money. The bill authorizes FGIS to use funds to buy gifts for their visitors or hosts. The Committee, however, believes that the Administrator should promulgate regulations to ensure that the gifts do not exceed a certain value. This will help to keep the cost of the gifts to a minimum as well as provide personnel with helpful guidelines when making purchases. The Committee envisions FGIS purchasing small tokens, such as pens, paper weights, and other small items of little intrinsic value.

Section 10—Violation of subpoena

Section 10 of the bill amends section 17(e) of the Act to clarify that violations of a subpoena will be treated as a misdemeanor

[7] Initial violations are currently treated as misdemeanors with a penalty of up to 12 months imprisonment or $10,000 or both.

under the Act, with a penalty for the violator of up to 1 year imprisonment or a fine of not more than $10,000 or both the imprisonment and fine.

Section 11—Standardizing commercial inspections

Section 11 of the bill amends section 22(a) of the Act to authorize FGIS to work with appropriate governmental, technical, or scientific organizations in addition to the National Institute on Science and Technology (NIST) and the National Conference on Weights and Measures to promote greater uniformity in commercial grain inspection results.

Section 12—Elimination of gender references

Section 12 of the bill amends various provisions of the Act to eliminate gender-specific references.

Section 13—Repeal of temporary amendment language; technical amendments

Section 13(a) of the bill amends section 2 of the United States Grain Standards Act Amendments of 1988 (Public Law 100–518; 102 Stat. 2584) by striking the provision that provides effective dates for various amendments to the United States Grain Standards Act.

Section 13(b) of the bill makes technical amendments to sections 21(a) and 22(c) of the Act.

Section 14—Authority to collect fees; termination of advisory committee

Section 14(a) of the bill amends section 7(j) of the Act by adding a new paragraph (4) that provides that the duties imposed by paragraph (2) of that section on designated official agencies and State agencies and the investment authority provided by paragraph (3) will expire on September 30, 1998. After that date, the fees established by the Administrator pursuant to paragraph (1) may not cover administrative and supervisory costs related to the official inspection of grain.[8]

Section 14(b) of the bill amends section 7A(l) of the Act by adding a new paragraph (3) that provides that the authority provided to the Administrator by paragraph (1) of that section and the duties imposed by paragraph (2) on agencies and other persons will expire on September 30, 1998. After that date, the new paragraph (3) reinstates the provisions of section 7A(1) that were in effect prior to October 1.[9]

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[8] This reinstates the provisions of section 7(j) that were in effect prior to October 1, 1981.

[9] Prior to the amendments made by Public Law 97–35 (effective October 1, 1981) section 7A(l) read as follows: "(l) The Administrator shall, under such regulations as the Administrator may prescribe, charge and collect reasonable fees to cover the estimated costs of official weighing and supervision of weighing except when the official weighing or supervision of weighing is performed by a designated official agency or by a State under a delegation of authority. The fees authorized by this paragraph shall, as nearly as practicable, cover the costs of the Service incident to its performance of official weighing and supervision of weighing services in the United States and on United States grain in Canadian ports, excluding administrative and supervisory costs. The fees authorized by this paragraph shall be deposited into a fund which shall be available without fiscal year limitation for the expenses of the Service incident to providing services under this Act.".

Section 14(c) of the bill amends section 21 of the Act by adding a new subsection (e) that provides for the termination of the advisory committee on September 30, 1998.

Section 15—Effective dates

Section 15 of the bill provides effective dates for the various provisions in and amendments made by the bill.

COMMITTEE CONSIDERATION

I. HEARING

On August 4, 1993, the Subcommittee on General Farm Commodities and the Subcommittee on Foreign Agriculture and Hunger held a joint public hearing regarding H.R. 2689, a bill to amend the United States Grain Standards Act to extend the authority of the Federal Grain Inspection Service (FGIS) to collect fees to cover administrative and supervisory costs through September 30, 1998, and for other purposes. Witnesses testifying were Mr. David R. Galliart, Acting Administrator, Federal Grain Inspection Service, United States Department of Agriculture; Mr. Paul S. Weller, Jr., Executive director of the American Association of Grain Inspection and Weighing Agencies; Mr. James Buchanan, Vice President, Illinois Cereal Mills, Inc., Paris, Illinois and Chairman of the National Grain and Feed Association's Grain and Feed Safety, Quality, Grades and Weights Committee; and Mr. David C. Lyons, Vice President, Government Relations, Louis Dreyfus Corporation, appearing on behalf of the National Grain Trade Council, the North American Export Grain Association, and the Terminal Elevator Grain Merchants Association.

II. SUBCOMMITTEE CONSIDERATION

On September 9, 1993, the Subcommittee on General Farm Commodities and the Subcommittee on Foreign Agriculture and Hunger met, pursuant to notice, in a joint business meeting to consider H.R. 2689.

Representative Johnson of South Dakota, Chairman of the Subcommittee on General Farm Commodities, called the meeting to order and, by unanimous consent, it was made in order that during the business meeting any amendment offered for consideration by a member of one subcommittee would be considered pending before the other subcommittee. Further, by unanimous consent, the subcommittees agreed that separate votes would only be taken by each subcommittee if so demanded by a member.

Following opening statements by members of the two subcommittees, Chairman Johnson offered an amendment in the nature of a substitute to H.R. 2689. By unanimous consent, the amendment in the nature of a substitute was made in order as original text for the purpose of amendment.

Mr. Glickman was recognized and offered an amendment to prohibit the addition of water to any grain (except in the course of milling, malting, or other processing and pest control practices) unless a determination is made by the Administrator of FGIS that such a prohibition conflicts with the purposes of the United States Grain Standards Act. Following discussion, the amendment was

adopted by the subcommittees by a division vote of 10 ayes to 4 nays.

Mr. Allard was recognized and offered an amendment to extend the authorization of appropriations for the non-fee-based activities of FGIS and other provisions of the United States Grain Standards Act set to expire on September 30, 1993 only through fiscal year 1998. The amendment in the nature of a substitute extended those provisions through fiscal year 2003. The amendment offered by Mr. Allard was agreed to by voice vote.

Mr. Peterson of Minnesota was recognized and he stated that he and Mr. Pomeroy had intended to offer an amendment to require the Administrator of FGIS to inspect and weigh all grain imported into the United States in accordance with such standard and procedures as are applied to grains exported from the United States. Mr. Peterson expressed concern over reports that Canadian grain interests may be disposing of wheat containing vomitoxin by exporting it to the United States. Mr. Peterson stated that he had decided to wait and offer the amendment during full Committee consideration in order to allow time for some unanswered questions to be addressed.

Mr. Ewing was recognized and offered report language directing the Administrator of FGIS to include a comprehensive plan to maximize the agency's efficiency and effectiveness in the agency's annual report to Congress. The report language was agreed to by voice vote.

Chairman Johnson offered an amendment to replace gender-specific references contained in the United States Grain Standards Act with gender-neutral references. The amendment was adopted by voice vote.

Chairman Johnson offered report language to clarify the intent of section 8 of the amendment in the nature of a substitute under which the Administrator of FGIS is authorized to extend appropriate courtesies to official representatives of foreign countries. Ms. Long was recognized and offered a modification to the proposed report language. The report language, as modified, was agreed to by unanimous consent.

By a voice vote in the presence of a quorum the amendment in the nature of a substitute, as amended, was agreed to and ordered reported by each subcommittee to the full Committee. By unanimous consent the staff was authorized to make any necessary technical and conforming changes.

III. FULL COMMITTEE CONSIDERATION

The Committee on Agriculture met, pursuant to notice, on September 22, 1993 to consider H.R. 2689. Chairman de la Garza called the meeting to order and recognized Mr. Johnson, Chairman of the Subcommittee on General Farm Commodities.

Mr. Johnson stated that the Subcommittee on General Farm Commodities and the Subcommittee on Foreign Agriculture and Hunger has reported H.R. 2689 to the full Committee. Mr. Johnson then offered an amendment in the nature of a substitute for consideration by the Committee. By unanimous consent, the amendment in the nature of a substitute offered by Mr. Johnson was made in order as original text for the purpose of amendment.

Discussion ensued regarding the provisions of the substitute prohibiting the addition of water to grain except under certain circumstances. The provisions were adopted during consideration by the subcommittees as the result of an amendment offered by Mr. Glickman.

Mr. Glickman was recognized and suggested striking the provision requiring that the Administrator must determine that the prohibition on the addition of water to gain conflicts with the purposes of the United States Grain Standards Act in order to allow the addition of water to grain.

Mr. Sarpalius offered an amendment to strike the provisions of the substitute that prohibited the addition of water to grain except in certain circumstances and to instead prohibit the addition of water to grain but require the Administrator to permit the addition of water to suppress grain dust through the issuance of permits unless a determination is made that the application of water materially affects the weight and quality of grain. Following some discussion, Mr. Johnson announced that the Subcommittee on General Farm Commodities would convene a hearing to investigate problems associated with the addition of water to grain for purposes of dust suppression. Mr. Sarpalius subsequently withdrew the amendment.

Mr. Glickman effered an amendment to strike the provisions in the substitute regulating the addition of water to grain. The amendment was agreed to by unanimous consent.

Mr. Peterson was recognized and offered an amendment for himself and for Mr. Pomeroy to direct the Administrator of FGIS to require that all grain imported into the United States be accompanied by a valid certification of the grade designation and the level of vomitoxin contained in the grain. The amendment authorized the Administrator, upon request, to perform inspection services on a fee basis of any imported grain that is not accompanied by such certification prior to the transfer to the grain into an elevator, warehouse, or other storage facility in the United States. Following discussion, Mr. Peterson withdrew the amendment from consideration, with the understanding that the issue would be addressed by the subcommittee at a subsequent hearing.

Ms. Long was recognized and offered an amendment to provide that no gift offered or received by the Administrator while extending appropriate courtesies to official representatives of foreign countries under the authority of the Act may exceed $20 in value. The amendment was agreed to by unanimous consent.

Mr. Smith of Michigan was recognized and offered an amendment to direct the Administrator of FGIS to require that, upon the first sale of grain by a producer, the grain would receive the highest official grade designation for which it is qualified and that the bill of sale for the grain would reflect this designation. Following discussion, Mr. Smith of Michigan withdrew the amendment from consideration with the understanding that the issue would be addressed by the subcommittee at a subsequent hearing.

By voice vote, and in the presence of a quorum, the amendment in the nature of substitute to H.R. 2689, as amended, was agreed to by the Committee and ordered reported to the House with the recommendation that it do pass.

By unanimous consent, the Committee staff was authorized to make any necessary technical and conforming changes.

Whereupon the Committee adjourned.

Administration Position

At the time of the filing of this report, the Committee had not received a report from the U.S. Department of Agriculture concerning H.R. 2689, as amended, to amend Public Law 100–518 and the United States Grain Standards Act to extend through September 30, 1998, the authority of the Federal Grain Inspection Service to collect fees to cover administrative and supervisory costs, and for other purposes.

Budget Act Compliance (Section 308 and Section 403)

The provisions of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representative and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, or new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 27, 1993.

Hon. E de la Garza,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 2689, the United States Grain Standards Act Amendments of 1993, as ordered reported by the House Committee on Agriculture on September 22, 1993. Because the bill would affect direct spending and revenues, pay-as-you-go procedures would apply.

H.R. 2689 would reauthorize the collection of fees for administrative and supervisory costs associated with weighing and inspecting grain; extend the authorization of appropriations for expenses of the Federal Grain Inspection Service (FGIS); make minor changes in some activities, such as the licensing of inspectors; provide for a pilot program to allow more than one state or local agency to carry out inspections within a single geographical area; and provide for the collection of fees for the testing of grain inspection instruments for commercial inspection. In addition, the bill would increase criminal penalties for violations of the law.

The fees generated for administrative costs of these inspection and weighing services are offsetting collections, which are spent by the FGIS. We estimate that net outlays in each year would be zero. Because the collection of the fees and the resulting spending would not depend on appropriations action, this bill would affect direct spending. The net effect on pay-as-you-go outlays would be zero in each year.

H.R. 2689 also would affect revenues, because it would increase criminal penalties. CBO estimates that the effect on revenues in each year would be negligible.

The estimated authorizations for grain inspection activities extended by the bill are shown in the table below.

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998
Authorization of appropriations	12	12	13	13	14
Estimated outlays	9	12	13	13	13

CBO estimates that the bill would not affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Eileen Manfredi and Ian McCormick, who can be reached at 226–2860.

Sincerely,

JAMES L. BLUM,
(For Robert D. Reischauer, Director).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 2689, as amended, will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 2689, as amended.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

UNITED STATES GRAIN STANDARDS ACT

* * * * * * *

DEFINITIONS

SEC. 3. When used in this Act, except where the context requires otherwise—

(a) the term "Secretary" means the Secretary of Agriculture of the United States or [his delegates] *a delegate of the Secretary*;

* * * * * * *

(z) the term "Administrator" means the Administrator of the Federal Grain Inspection Service or [his delegates] *a delegate of the Administrator*;

* * * * * * *

STANDARDS

SEC. 4. (a) The Administrator is authorized to investigate the handling, weighing, grading, and transportation of grain and to fix and establish (1) standards of kind, class, quality, and condition for corn, wheat, rye, oats, barley, flaxseed, sorghum, soybeans mixed grain, and such other grains as in [his] *the Administrator's* judgment the usages of the trade may warrant and permit, and (2) standards or procedures for accurate weighing and weight certification and controls, including safeguards over equipment calibration and maintenance or procedures for grain shipped in interstate or foreign commerce; and the Administrator is authorized to amend or revoke such standards or procedures whenever the necessities of the trade may require.

* * * * * * *

OFFICIAL INSPECTION AND WEIGHING REQUIREMENTS

SEC. 5. (a) Whenever standards or procedures, are effective under section 4 of this Act for any grain—

(1) no person shall ship from the United States to any place outside thereof any lot of such grain, unless such lot is officially weighed and officially inspected (on the basis of official samples taken after final elevation as near the final spout through which the grain passes as physically practicable as it is being loaded aboard, or while it is in, the final carrier in which it is to be transported from the United States) in accordance with such standards or procedures, and unless a valid official certificate showing the official grade designation and certified weight of the lot of grain has been provided by official inspection personnel and is promptly furnished by the shipper, or [his agent] *the shipper's agent*, to the consignee with the bill of lading or other shipping documents covering the shipment: *Provided*, That the Administrator may waive the foregoing requirement in emergency or other circumstances which would not impair the objectives of this Act: *Provided further*, That the Administrator shall waive the requirement for official inspection whenever the parties to a contract for such shipment of a lot of grain (which is not sold, offered for sale, or consigned for sale by grade) from the United States to any place outside thereof mutually agree under the contract to ship such lot of grain without official inspection being performed and a

copy of the contract is furnished to the Administrator prior to shipment;

* * * * * * *

(b) All official inspection and official weighing, whether performed by authorized Service employees or any other person licensed under section 8 of this Act, shall be supervised by representatives of the Administrator, in accordance with such regulations as [he] *the Administrator* may provide.

* * * * * * *

OFFICIAL INSPECTION AUTHORITY AND FUNDING

SEC. 7. (a) The Administrator is authorized to cause official inspection under the standards provided for in section 4 of this Act to be made of all grain required to be officially inspected as provided in section 5 of this Act, in accordance with such regulations as [he] *the Administrator* may prescribe.

(b) The Administrator is further authorized, upon request of any interested person, and under such regulations as [he] *the Administrator* may prescribe, to cause official inspection to be made with respect to any grain whether by official sample, submitted sample, or otherwise within the United States under standards provided for in section 4 of this Act, or, upon request of the interested person, under other criteria approved by the Secretary for determining the kind, class, quality, or condition of grain, or other facts relating to grain, whenever in [his] *the Administrator's* judgment providing such service will effectuate any of the objectives stated in section 2 of this Act.

* * * * * * *

(e)(1) * * *

(2) If the Administrator determines, pursuant to paragraph (3) of this subsection, that a State agency is qualified to perform official inspection, meets the criteria in subsection (f)(1)(A) of this section, and (A) was performing official inspection at an export port location under this Act on July 1, 1976, or (B)(i) performed official inspection at an export port location at any time prior to July 1, 1976, (ii) was designated under subsection (f) of this section on the date of enactment of the Agriculture and Food Act of 1981 to perform official inspections at locations other than export port locations, and (iii) operates in a State from which total annual exports of grain do not exceed, as determined by the Administrator, 5 per centum of the total amount of grain exported from the United States annually, the Administrator may delegate authority to the State agency to perform all or specified functions involved in official inspection (other than appeal inspection) at export port locations within the State, including export port locations which may in the future be established, subject to such rules, regulations, instructions, and oversight as [he] *the Administrator* may prescribe, and any such official inspection shall continue to be the direct responsibility of the Administrator. Any such delegation may be revoked by the Administrator, at [his] *the Administrator's* discretion, at

any time upen notice to the State agency without opportunity for a hearing.

* * * * * * *

(f)(1) With respect to official inspections other than at export port locations, the Administrator is authorized, upon application by any State or local governmental agency, or any person, to designate such agency or person as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection) at locations where the Administrator determines official inspection is needed, if—

(A) the agency or person shows to the satisfaction of the Administrator that such agency or person—

(i) * * *

* * * * * * *

(vi) if a State or local governmental agency, will not use any moneys collected pursuant to the charging of fees for any purpose other than the maintenance of the official inspection operation [or other agricultural programs operated by] *of* the State or local governmental agency;

* * * * * * *

(2) Not more than one official agency or State delegated authority pursuant to subsection (e)(2) of this section for carrying out the inspection provisions of this Act shall be operative at one time for any geographic area as determined by the Administrator to effectuate the objectives stated in section 2 of this Act, *except that the Administrator may conduct pilot programs to allow more than one official agency to carry out inspections within a single geographical area without undermining such objectives.*

* * * * * * *

(i) The Administrator is authorized to cause official inspection under this Act to be made, as provided in subsection (a) of section 5 of this Act, in Canadian ports of United States export grain transshipped through Canadian ports, and pursuant thereto the Secretary is authorized to enter into an agreement with the Canadian Government for such inspection. All or specified functions of such inspection shall be performed by official inspection personnel employed by the Service or, except for appeals, by persons operating under a contract with the Service *or as otherwise provided by agreement with the Canadian Government.*

(j)(1) * * *

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(4) The duties imposed by paragraph (2) on designated official agencies and State agencies described in such paragraph and the investment authority provided by paragraph (3) shall expire on September 30, 1998. After that date, the fees established by the Administrator pursuant to paragraph (1) shall not cover administrative and supervisory costs related to the official inspection of grain.

WEIGHING AUTHORITY

SEC. 7A. (a) * * *

* * * * * * *

(c)(1) * * *

(2) With respect to official weighing or supervision of weighing for any location at which official inspection is provided other than by the Service, the Administrator is authorized, with respect to export port locations, to delegate authority to perform official weighing or supervision of weighing to the State agency providing official inspection service at such location, and with respect to any other location, to designate the agency or person providing official inspection service at such location to perform official weighing or supervision of weighing, if such agency or person qualifies for a delegation of authority or designation under section 7 of this Act, except that where the term "official inspection" is used in such section it shall be deemed to refer to "official weighing" or "supervision of weighing" under this section. If such agency or person is not available to perform such weighing services, or the Administrator determines that such agency or person is not qualified to perform such weighing services, then (A) at export port locations official weighing or supervision of weighing shall be performed by official inspection personnel employed by the Service, and (B) at any other location, the Administrator is authorized to cause official weighing or supervision of weighing to be performed by official inspection personnel employed by the Service or designate any State or local governmental agency, or any person to perform official weighing or supervision of weighing, if such agency, or person meets the same criteria that agencies must meet to be designated to perform official inspection as set out in section 7 of this Act, except that where the term "official inspection" is used in such section it shall be deemed to refer to *"official weighing" or* "supervision of weighing" under this section. Delegations and designations made pursuant to this subsection shall be subject to the same provisions for delegations and designations set forth in subsection (g) of section 7 of this Act.

(d) The Administrator is authorized to cause official weighing under this Act to be made, as provided in subsection (a) of section 5 of this Act, in Canadian ports of United States export grain transshipped through Canada; and pursuant thereto the Secretary is authorized to enter into an agreement with the Canadian Government for such official weighing. All or specified functions of such weighing shall be performed by official inspection personnel employed by the Service or, except for appeals, by persons operating under a contract with the Service *or as otherwise provided by agreement with the Canadian Government.*

(e) The Administrator is further authorized to cause official weighing or supervision of weighing under standards or procedures provided for in section 4 of this Act to be made at grain elevators, warehouses, or other storage or handling facilities not subject to subsection (a) or (b) of this section, upon request of the operator of such grain elevator, warehouse, or other storage or handling facility and in accordance with such regulations as [he] *the Administrator* may prescribe.

* * * * * * *

(i) No State or local governmental agency or person other than an authorized employee of the Service shall perform official weighing or supervision of weighing for the purposes of this Act except in accordance with the provisions of an unsuspended and

unrevoked delegation of authority or designation by the Administrator as provided in this section *or as otherwise provided in section 7(i) and subsection (d)*. Not more than one official agency or State delegated authority pursuant to subsection (c)(2) of this section for carrying out the weighing provisions of this Act shall be operative at one time for any geographic area as determined by the Administrator to effectuate the objectives stated in section 2 of this Act, *except that the Administrator may conduct pilot programs to allow more than one official agency to carry out the weighing provisions within a single geographic area without undermining such objectives.*

* * * * * * *

(l)(1) * * *

* * * * * * *

(3) The authority provided to the Administrator by paragraph (1) and the duties imposed by paragraph (2) on agencies and other persons described in such paragraph shall expire on September 30, 1998. After that date, the Administrator shall, under such regulations as the Administrator may prescribe, charge and collect reasonable fees to cover the estimated costs of official weighing and supervision of weighing except when the official weighing or supervision of weighing is performed by a designated official agency or by a State under a delegation of authority. The fees authorized by this paragraph shall, as nearly as practicable, cover the costs of the Service incident to its performance of official weighing and supervision of weighing services in the United States and on United States grain in Canadian ports, excluding administrative and supervisory costs. The fees authorized by this paragraph shall be deposited into a fund which shall be available without fiscal year limitation for the expenses of the Service incident to providing services under this Act.

TESTING OF EQUIPMENT

SEC. 7B. (a) The Administrator shall provide for the testing of all equipment used in the sampling, grading, inspection, and weighing for the purpose of official inspection, official weighing, or supervision of weighing of grain located at all grain elevators, warehouses, or other storage or handling facilities at which officials inspection or weighing services are provided under this Act, to be made on a random and periodic basis, but at least annually and under such regulations as the Administrator may prescribe, as [he] *the Administrator* deems necessary to assure the accuracy and integrity of such equipment. Such regulations shall provide for the charging and collection of reasonable fees to cover the estimated costs to the Service incident to the performance of such testing by employees of the Service. Such fees shall be deposited into the fund created by section 7(j) of this Act.

* * * * * * *

LIMITATION AND ADMINISTRATIVE AND SUPERVISORY COSTS

SEC. 7D. The total administrative and supervisory costs which may be incurred under this Act for [inspection and weighing] *serv-*

ices performed (excluding standardization, compliance, and foreign monitoring activities) for each of the fiscal years 1989 through [1993] *1998* shall not exceed 40 per centum of the total costs for such activities carried out by the Service for such year.

LICENSES AND AUTHORIZATIONS

SEC. 8. (a) The Administrator is authorized (1) to issue a license to any individual upon presentation to [him] *the Administrator* of satisfactory evidence that such individual is competent, and is employed *(or is supervised under a contractual arrangement)* by an official agency or a State agency delegated authority under section 7 or 7A of this Act, to perform all or specified functions involved in original inspection or reinspection functions involved in official inspection, or in the official weighing of the supervision of weighing, other than appeal weighing, of grain in the United States; (2) to authorize any competent employee of the Service to (A) perform all or specified original inspection, reinspection, or appeal inspection functions involved in official inspection of grain in the United States, or of United States grain in Canadian ports, (B) perform official weighing or supervision of weighing (including appeal weighing) of grain in the United States, or of United States grain in Canadian ports, (C) supervise the official inspection, official weighing, or supervision of weighing of grain in the United States and of United States grain in Canadian ports or the testing of equipment, and (D) perform monitoring activities in foreign ports with respect to grain officially inspected and officially weighed under this Act; (3) to contract with any person or government agency to perform specified sampling, laboratory testing, and similar technical functions and to license competent persons to perform such functions pursuant to such contract; and (4) to contract with any competent person for the performance of monitoring activities in foreign ports with respect to grain officially inspected and officially weighed under this Act. [No person] *Except as provided in sections 7(i) and 7A(d), no person* shall perform any official inspection or weighing function for purposes of this Act unless such person holds an unsuspended and unrevoked license or authorization from the Administrator under this Act.

(b) All classes of licenses issued under this Act shall terminate triennially on a date or dates to be fixed by regulation of the Administrator: *Provided,* That any license shall be suspended automatically when the licensee ceases to be employed by an official agency or by a State agency under a delegation of authority pursuant to this Act or to operate [independently under the terms of a contract for the conduct of any functions involved in official inspection] *under the terms of a contract for the conduct of any functions* under this Act: *Provided further,* That subject to subsection (c) of this section such license shall be reinstated if the licensee is employed by an official agency or by a State agency under a delegation of authority pursuant to this Act or resumes operation under such a contract within one year of the suspension date and the license has not expired in the interim.

(c) The Administrator may require such examinations and reexaminations as [he] *the Administrator* may deem warranted to determine the competence of contract with the Service shall not, un-

less otherwise employed by the Federal Government, be determined to be employees of the Federal Government of the United States: *Provided,* That such persons shall be considered in the performance of any official inspection, official weighing, or supervision of weighing function as prescribed by this Act or by the rules and regulations of the Administrator, as persons acting for or on behalf of the United States, for the purpose of determining the application of section 201 of title 18 of the United States Code, to such persons and as employees of the Department of Agriculture assigned to perform inspection functions for the purposes of sections 1114 and 111 of title 18 of the United States Code.

(d) Persons employed *or supervised under a contractual arrangement* by an official agency (including persons employed *or supervised under a contractual arrangement* by a State agency under a delegation of authority pursuant to this Act) and persons performing official inspection functions under contract with the Service shall not, unless otherwise employed by the Federal Government, be determined to be employees of the Federal Government of the United States: *Provided,* That such persons shall be considered in the performance of any official inspection, official weighing, or supervision of weighing function as prescribed by this Act or by the rules and regulations of the Administrator, as persons acting for or on behalf of the United States, for the purpose of determining the application of section 201 of title 18 of the United States Code, to such persons and as employees of the Department of Agriculture assigned to perform inspection functions for the purposes of sections 1114 and 111 of title 18 of the United States Code.

* * * * * * *

(f) The Administrator shall provide for the periodic rotation of supervisory personnel and official inspection personnel employed by the Service as [he] *the Administrator* deems necessary to preserve the integrity of the official inspection and weighing system provided by this Act.

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REFUSAL OF RENEWAL, OR SUSPENSION OR REVOCATION, OF LICENSES

SEC. 9. The Administrator may refuse to renew, or may suspend or revoke, any license issued under this Act whenever, after the licensee has been afforded an opportunity for a hearing, the Administrator shall determine that such licensee is incompetent, or has inspected or weighed or supervised the weighing of grain for purposes of this Act by any standard or criteria other than as provided for in this Act, or has issued, or caused the issuance of, any false or incorrect official certificate or other official form, or has knowingly or carelessly inspected or weighed or supervised the weighing of grain improperly under this Act, or has accepted any money or other consideration, directly or indirectly, for any neglect or improper performance of duty, or has used [his license] *the license* or allowed it to be used for any improper purpose, or has otherwise violated any provision of this Act or of the regulations prescribed or instructions issued to [him] *the licensee* by the Administrator under this Act. The Administrator may, without first affording the licensee an opportunity for a hearing, suspend any license tempo-

rarily pending final determination whenever the Administrator deems such action to be in the best interests of the official inspection system under this Act. The Administrator may summarily revoke any license whenever the licensee has been convicted of any offense prohibited by section 13 of this Act or convicted of any offense proscribed by title 18 of the United States Code, with respect to performance of functions under this Act.

REFUSAL OF INSPECTION AND WEIGHING SERVICES AND CIVIL PENALTIES

SEC. 10. (a) The Administrator may (for such period, or indefinitely, as [he] *the Administrator* deems necessary to effectuate the purposes of this Act) refuse to provide official inspection or the services related to weighing otherwise available under this Act with respect to any grain offered for such services, or owned, wholly or in part, by any person if [he] *the Administrator* determines (1) that the individual (or in case such person is a partnership, any general partner; or in case such person is a corporation, any officer, director, or holder or owner of more than 10 per centum of the voting stock; or in case such person is an unincorporated association or other business entity, any officer or director thereof; or in case of any such business entity, any individual who is otherwise responsibly connected with the business) has knowingly committed any violation of section 13 of this Act or has been convicted of any violation of other Federal law with respect to the handling, weighing, or official inspection of grain, or that official inspection or the services related to weighing have been refused for any of the above-specified causes (for a period which has not expired) to such person, or any other person conducting a business with which the former was, at the time such cause existed, or is responsibly connected; and (2) that providing such service with respect to such grain would be inimical to the integrity of the service.

(b) For purposes of paragraph (a) of this section, a person shall be deemed to be responsibly connected with a business if [he] *the person* was or is a partner, officer, director, or holder or owner of 10 per centum or more of its voting stock, or an employee in a managerial or executive capacity.

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PROHIBITION ON CERTAIN CONFLICTS OF INTEREST

SEC. 11. (a) No person licensed or authorized by the Administrator to perform any official function under this Act, or employed by the Administrator in otherwise carrying out any of the provisions of this Act, shall, during the term of such license, authorization, or employment, (a) be financially interested (directly or otherwise) in any business entity owning or operating any grain elevator or warehouse or engaged in the merchandising of grain, or (b) be in the employment of, or accept gratuities from, any such entity, or (c) be engaged in any other kind of activity specified by regulation of the Administrator as involving a conflict of interest: *Provided, however,* That the Administrator may license qualified employees of any grain elevators or warehouses to perform official sampling functions, under such conditions as the Administrator

may by regulation prescribe, and the Administrator may by regulation provide such other exceptions to the restrictions of this section as [he] *the Administrator* determines are consistent with the purposes of this Act.

(b)(1) No official agency or a State agency delegated authority under this Act, or any member, director, officer, or employee thereof, and no business or governmental entity related to any such agency, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any business involving the commercial transportation, storage, merchandising, or other commercial handling of grain, or the use of official inspection service (except that in the case of a producer such use shall not be prohibited for grain in which [he] *the producer* does not have an interest); and no business or government entity conducting any such business, or any member, director, officer, or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by or directly or indirectly have any stock or other financial interest in, any official agency or a State agency delegated inspection authority. Further, no substantial stockholder in any incorporated official agency shall be employed in or otherwise engaged in, or be a substantial stockholder in any corporation conducting any such business, or directly or indirectly have any other kind of financial interest in any such business; and no substantial stockholder in any corporation conducting such a business shall operate or be employed by or be a substantial stockholder in, or directly or indirectly have any other kind of financial interest in, any official agency.

* * * * * * *

(5) Notwithstanding the foregoing provisions of this subsection, the Administrator may delegate authority to a State agency or designate a governmental agency, board of trade, chamber of commerce, or grain exchange to perform official inspection or perform official weighing or supervision of weighing except that for purposes of supervision of weighing only, [he] *the Administrator* may also designate any other person, if [he] *the Administrator* determines that any conflict of interest which may exist between the agency or person or any member, director, officer, employee, or stockholder thereof and any business involving the transportation, storage, merchandising, or other handling of grain or use of official inspection or weighing service is not such as to jeopardize the integrity or the effective and objective operation of the functions performed by such agency. Whenever the Administrator makes such a determination and makes a delegation or designation to an agency that has a conflict of interest otherwise prohibited by this subsection, the Administrator shall, within thirty days after making such a determination, submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate, detailing the factual bases for such determination.

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RECORDS

SEC. 12. (a) * * *

(b) Every official agency, every State agency delegated authority under this Act, and every person licensed to perform any official inspection or official weighing or supervision of weighing function under this Act required to maintain records under this section shall keep such records for a period of five years after the inspection, weighing, or transaction, which is the subject of the record, occurred: *Provided,* That grain samples shall be required to be maintained only for such period not in excess of ninety days as the Administrator, after consultation with the grain trade and taking into account the needs and circumstances of local markets, shall prescribe; and in specific cases other records may be required by the Administrator or to be maintained for not more than three years in addition to the five-year period whenever in [his] *the Administrator's* judgment the retention of such records for the longer period is necessary for the effective administration and enforcement of this Act.

(c) Every official agency, every State agency delegated authority under this Act, and every person licensed to perform any official inspection or official weighing or supervision of weighing function under this Act required to maintain records under this section shall permit any authorized representative of the Secretary or Administrator or the Comptroller General of the United States to have access to, and to copy, such records at all reasonable times. The Administrator shall, from time to time, perform audits of official agencies and State agencies delegated authority under this Act in such manner and at such periodic intervals as [he] *the Administrator* deems appropriate.

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PROHIBITED ACTS

SEC. 13. (a) No person shall—

(1) knowingly falsely make, issue, alter, forge, or counterfeit any official certificate or other official form or official mark;

(2) knowingly utter, publish, or use as true any falsely made, issued, altered, forged, or counterfeited official certificate or other official form or official mark, or knowingly possess, without promptly notifying the Administrator or [his] *the Administrator's* representative, or fail to surrender to such a representative upon demand, any falsely made, issued, altered, forged, or counterfeited official inspection certificate or other official form, or any device for making any official inspection mark or simulation thereof, or knowingly possess any grain in a container bearing any falsely made, issued, altered, forged, or counterfeited official inspection mark without promptly giving such notice;

* * * * * * *

(7) improperly influence, or attempt to improperly influence, any official inspection personnel or personnel of agencies delegated authority or of agencies or other persons designated under this Act or any officer or employee of the Department of Agriculture with respect to the performance of [his] *the person's* duties under this Act;

(8) forcibly assault, resist, oppose, impede, intimidate, or interfere with any official inspection personnel or personnel of agencies delegated authority or of agencies or other persons designated under this Act or any officer or employee of the Department of Agriculture in, or on account of, the performance of [his duties] *the duties of the officer, employee, or inspection personnel* under this Act;

(9) falsely represent that [he] *the person* is licensed or authorized to perform an official inspection or official weighing or supervision of weighing function under this Act;

* * * * * * *

[(11) violate any provision of section 5; 6; 7(f) (2), (3), or (4); 7A; 7B(c); 8; 11; 12; or 17A of this Act;]

(11) violate section 5, 6, 7, 7A, 7B, 8, 11, 12, 16, or 17A;

* * * * * * *

CRIMINAL PENALTIES

SEC. 14. (a) Any person who commits an offense prohibited by section 13 (except an offense prohibited by paragraphs (a)(7), (a)(8), and (b)(4) in which case [he] *the person* shall be subject to the general penal statutes in title 18 of the United States Code relating to crimes and offenses against the United States) [shall be guilty of a misdemeanor and shall, on conviction thereof, be subject to imprisonment for not more than twelve months, or a fine of not more than $10,000, or both such imprisonment and fine; but, for each subsequent offense subject to this subsection, such person] shall be guilty of a felony and shall, on conviction thereof, be subject to imprisonment for not more than five years, or a fine of not more than $20,000, or both such imprisonment and fine.

(b) Nothing in this Act shall be construed as requiring the Administrator to report minor violations of this Act for criminal prosecution whenever [he] *the Administrator* believes that the public interest will bo adequately served by a suitable written notice or warning, or to report any violation of this Act for prosecution when [he] *the Administrator* believes that institution of a proceeding under section 10 of this Act will obtain compliance with this Act and [he] *the Administrator* institutes such a proceeding.

* * * * * * *

RESPONSIBILITY FOR ACTS OF OTHERS

SEC. 15. When construing and enforcing the provisions of this Act, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of [his] *the person's* employment or office shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person.

GENERAL AUTHORITIES

SEC. 16. (a) * * *

(b) The Administrator is authorized to investigate reports or complaints of discrepancies and abuses in the official inspection and

weighing of grain under this Act. The Administrator shall prescribe by regulation procedures for (1) promptly investigating (A) complaints of foreign grain purchasers regarding the official inspection or official weighing of grain shipped from the United States, (B) the cancellation of contracts for the export sale of grain required to be inspected or weighed under this Act, and (C) any complaint regarding the operation or administration of this Act or any official transaction with which this Act is concerned; and (2) taking appropriate action on the basis of the findings of any investigation of such complaints. [The Administrator shall report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate at the end of every three-month period with respect to investigative action taken on complaints, during the immediately preceding three-month period.]

* * * * * * *

(g) TESTING OF CERTAIN WEIGHING EQUIPMENT.—(1) Subject to paragraph (2), the Administrator may provide for the testing of weighing equipment used for purposes other than weighing grain. The testing shall be performed—

(A) in accordance with such regulations as the Administrator may prescribe; and

(B) for a reasonable fee that is established by regulation or contractual agreement and is sufficient to cover, as nearly as practicable, the estimated costs of the testing preformed.

(2) Testing performed under paragraph (1) may not conflict with or impede the objectives specified in section 2.

(h) TESTING OF GRAIN INSPECTION INSTRUMENTS.—(1) Subject to paragraph (2), the Administrator may provide for the testing of grain inspection instruments used for commercial inspection. The testing shall be performed—

(A) in accordance with such regulations as the Administrator may prescribe; and

(B) for a reasonable fee that is established by regulation or contractual agreement and is sufficient to cover, as nearly as practicable, the estimated costs of the testing preformed.

(2) Testing performed under paragraph (1) may not conflict with or impede the objectives specified in section 2.

(i) ADDITIONAL FOR FEE SERVICES.—(1) In accordance with such regulations as the Administrator may prescribe, the Administrator may perform such other services as the Administrator considers to be appropriate.

(2) In addition to the fees authorized by this section and sections 7, 7A, 7B, and 17A, the Administrator shall collect reasonable fees to cover the estimated costs of services performed under paragraph (1) other than standardization, compliance, and foreign monitoring activities.

(3) To the extent practicable, the fees collected under paragraph (2), together with any proceeds from the sale of any samples, shall cover the costs, including administrative and supervisory costs, of services performed under paragraph (1).

(j) DEPOSIT OF FEES.—Fees collected under subsections (g), (h), and (i) shall be deposited into the fund created under section 7(j).

(k) OFFICIAL COURTESIES.—The Administrator may extend appropriate courtesies to official representatives of foreign countries in

order to establish and maintain relationships to carry out the policy specified in section 2. No gift offered or received pursuant to this subsection shall exceed $20 in value.

ENFORCEMENT PROVISIONS

SEC. 17. (a) * * *

*   *   *   *   *   *   *

(e) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in [his] *the person's* power to do so, in obedience to the subpena or lawful requirement of the Administrator shall be guilty of a misdemeanor, and upon conviction thereof be subject to [the penalties set forth in subsection (a) of section 14 of this Act] *imprisonment for not more than 1 year or a fine of not more than $10,000, or both the imprisonment and fine.*

*   *   *   *   *   *   *

REGISTRATION REQUIREMENTS

SEC. 17A. (a) The Administrator shall provide, by regulation, for the registration of all persons engaged in the business of buying grain for sale in foreign commerce, and in the business of handling, weighing, or transporting of grain for sale in foreign commerce. This section shall not apply to—

(1) * * *

(2) any producer of grain who only incidentally or occasionally sells or transports grain which [he] *the producer* has purchased;

*   *   *   *   *   *   *

(c) The Administrator shall issue a certificate of registration to persons who comply with the provisions of this section. The certificate of registration issued in accordance with this section shall be renewed annually. If there has been any change in the information required under subsection (b), the person holding such certificate shall, within thirty days of the discovery of such change, notify the Administrator of such change. No person shall engage in the business of buying grain for sale in foreign commerce, and in the business commerce unless [he] *the person* has registered with the Administrator as required by this Act and has an unsuspended and unrevoked certificate of registration.

*   *   *   *   *   *   *

APPROPRIATIONS

SEC. 19. There are hereby authorized to be appropriated such sums as are necessary for standardization and compliance activities, monitoring in foreign ports grain officially inspected and weighed under this Act, and any other expenses necessary to carry out the provisions of this Act for each of the [fiscal years during the period beginning October 1, 1988, and ending September 30, 1993,] *fiscal years 1988 through 1998* to the extent that financing

is not obtained from fees and sales of samples as provided for in sections 7, 7A, [and 17A of this Act] *7B, 16, and 17A*.

* * * * * * *

ADVISORY COMMITTEE

SEC. 21. (a)[(1)] Not later than ninety days after the date of enactment of this section, the Secretary shall establish an advisory committee to provide advice to the Administrator with respect to implementation of this Act consistent with the declarations of policy in section 2 of this Act. The advisory committee shall consist of fifteen members, appointed by the Secretary, who represent the interests of all segments of the grain producing, processing, storing, merchandising, consuming, and exporting industries, including grain inspection and weighing agencies and scientists with expertise in research related to the policies established in section 2 of this Act. Members of the advisory committee shall be appointed to three-year terms, except that of the initial fifteen members of the advisory committee first appointed following the enactment of this section, five shall bo appointed for terms of one year and five shall be appointed for terms of two years. No member of the advisory committee may serve successive terms.

[(2) To ensure a smooth transition, the advisory committee established under section 20 (as in effect prior to October 1, 1988) shall continue in existence until all members of the advisory committee established under this section are appointed; and the Secretary may appoint members of the advisory committee established under section 20 to serve on the advisory committee established under this section, without regard to the time of service of such members on the advisory committee established under section 20.]

* * * * * * *

(e) TERMINATION.—The advisory committee shall terminate on September 30, 1998.

SEC. 22. STANDARDIZING COMMERCIAL INSPECTIONS.

(a) TESTING EQUIPMENT.—To promote greater uniformity in commercial grain inspection results, the Administrator may work in conjunction with the National Institute for Standards and Technology [and the National Conference on Weights and Measures], *the National Conference on Weights and Measures, or other appropriate governmental, scientific, or technical organizations* to—

(1) * * *

* * * * * * *

(c) INSPECTION SERVICES AND INFORMATION.—To encourage the use of equipment and procedures developed in accordance with [subsection (a) and (b)] *subsections (a) and (b)*, the Administrator shall provide for official inspection services by the Service, States, and official inspection agencies and provide information on the proper use of sampling and inspection equipment, application of the grain standards, and availability of official inspection services, including appeals under this Act.

* * * * * * *

SECTION 2 OF THE UNITED STATES GRAIN STANDARDS ACT AMENDMENTS OF 1988

SEC. 2. GRAIN STANDARDS ACT.

[Effective for the period October 1, 1988, through September 30, 1993, inclusive, the] *The* United States Grain Standards Act is amended—

(1) * * *

* * * * * * *

O

103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–266

NATIONAL FOREST FOUNDATION ACT AMENDMENT ACT OF 1993

SEPTEMBER 28, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DE LA GARZA, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H.R. 3085]

The Committee on Agriculture to whom was referred the bill (H.R. 3085) to improve administrative services and support provided to the National Forest Foundation, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

BRIEF EXPLANATION

H.R. 3085 amends the National Forest Foundation Act (P.L. 101–593) (NFFA) to allow funds originally appropriated for use by the National Forest Foundation (Foundation) for start-up and administrative expenses to be used to fund the Foundation's projects, which include forest camps and tree planting activities. The amendment also extends the funding authorization in the NFFA for one year.

PURPOSE AND NEED

The National Forest Foundation Amendment Act of 1993 (the bill), allows the National Forest Foundation to fulfill the purposes for which it was established in 1990. The Foundation is a nonprofit corporation established to serve as a catalyst for developing cooperative relationships between the Forest Service and the private sector, and to conduct activities that further the purposes of programs administered by the Forest Service.

The NFFA authorized the appropriation of start-up funds for the Foundation in fiscal year 1992 for a two year period. The NFFA authorized the appropriation of matching funds for administrative ex-

69–006

penses of the Foundation beginning in fiscal year 1992 for a period of 5 years. However, the initial organization and board selection took longer than anticipated and no funds were appropriated until fiscal year 1993. The bill extends the authorization for appropriations of start-up and matching funds for one year to carry out the intent of the NFFA. Thus, the Foundation will have the full two years to start-up and five years to carry out projects.

Additionally, the NFFA limited the use of appropriated funds to start-up and administrative uses. Only $126,000 of the $1,037,000 appropriated has been required for administrative expenses. The Foundation has raised over $700,000 in private contributions for its projects: tree planting and forest camps for youth at risk. Activities at the camps include carpentry, trail building, and forest fire prevention. H.R. 3085 expands the purposes for which appropriated funds may be used to include funding for the Foundation's projects.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE

Section 1 sets out the short title of the bill: the "National Forest Foundation Act Amendment Act of 1993".

SECTION 2—PURPOSE

Section 2 provides that it is the purpose of the bill to provide for start-up and matching funds for project expenses to carry out the National Forest Foundation Act (Act) and to extend the funding authorization for start-up expenses for one year.

SECTION 3—ADMINISTRATIVE SERVICES AND SUPPORT

Section 3 amends section 405 of the Act, which is entitled "Administrative Services and Support".

a. Start-up funds

1. Current law

Section 405(a) authorizes the Secretary of Agriculture to provide to the National Forest Foundation (Foundation) $500,000 per year for the two years following November 16, 1990 for initial administrative and other start-up expenses. The funds must derive from funds appropriated pursuant to section 410(a) of the Act. Section 410(a) of the Act authorizes an appropriation of $1,000,000 for purposes of section 405 of the Act. P.L. 102–381 provided $500,000 under section 410(a) for fiscal year 1993. Section 405(a) of the Act provides that such funds remain available until expended for authorized purposes.

2. Amendment

Section 3(a)(1)(A) of the bill amends section 405(a) of the Act by adding a new purpose for which the Secretary may provide funds that have been appropriated under section 410(a) to the Foundation. Section 3(a)(1)(B) of the bill amends section 405(a) of the Act to change the beginning date of the two year period during which the Secretary may provide funds to the Foundation from funds appropriated under section 410(a) to October 1, 1992. Thus, under the

amendment, the Secretary may provide funds appropriated under section 410(a) of the Act to the Foundation to assist the Foundation in establishing an office and meeting initial administrative, project, and other start-up expenses from October 1, 1992, through September 30, 1994.

b. Matching funds

1. Current law

Section 405(b) of the Act authorizes the Secretary to provide matching funds for administrative expenses of the Foundation as authorized by section 410(b) of the Act for a period of five years beginning November 16, 1990. Section 410(b) of the Act authorizes an annual appropriation, for purposes of section 405 of the Act, for each of the five fiscal years following enactment of the bill (November 16, 1990), of $1,000,000 to the Secretary of Agriculture to be made available to the Foundation to match private contributions it receives. P.L. 102–381 provided $537,000 for matching funds under section 410(b) for fiscal year 1993.

2. Amendment

Section 3(a)(2)(A) of the bill amends section 405(b) by changing the beginning date of the five year period from November 16, 1990 to October 1, 1992. Section 3(a)(2)(B) provides that such funds may also be used for projects. Thus, under the amendment, the Secretary may provide funds appropriated under section 410(b) to the Foundation for administrative and project expenses from October 1, 1992 through September 30, 1997.

Section 3(b) amends section 410(b) of the Act to change the beginning date of the five year period during which matching funds may be appropriated from November 16, 1990 to October 1, 1992.

COMMITTEE CONSIDERATION

On September 23, 1993, the Committee on Agriculture met, pursuant to notice, to consider H.R. 3085, the National Forest Foundation Amendment Act of 1993. Chairman de la Garza explained the bill and recognized Mr. Volkmer and then Mr. Barlow for questions on the bill. The bill was ordered reported to the House by voice vote, in the presence of a quorum, with the recommendation that it be passed.

ADMINISTRATION POSITION

At the time of the filing of this report, the Committee had not received a report from the U.S. Department of Agriculture concerning H.R. 3085, to improve administrative services and support provided to the National Forest Foundation, and for other purposes.

BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, or new credit authority, or increased or decreased revenues or tax expenditures) are not considered applica-

ble. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 were not received by the Committee prior to the filing of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 3085, will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed to H.R. 3085.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

NATIONAL FOREST FOUNDATION ACT

* * * * * * *

TITLE VI—FOREST FOUNDATION

* * * * * * *

SEC. 405. ADMINISTRATIVE SERVICES AND SUPPORT.

(a) STARTUP FUNDS.—For purposes of assisting the Foundation in establishing an office and meeting initial administrative, *project,* and other startup expenses, the Secretary is authorized to provide to the Foundation $500,000, from funds appropriated pursuant to section 410(a), per year for the two years [following the date of enactment of this title] *beginning October 1, 1992.* Such funds shall remain available to the Foundation until they are expended for authorized purposes.

(b) MATCHING FUNDS.—In addition to the startup funds provided under subsection (a) of this section, for a period of five years [from the date of enactment of this title] *beginning October 1, 1992,* the Secretary is authorized to provide matching funds for administrative *and project* expenses incurred by the Foundation as authorized by section 410(b) of this title including reimbursement of expenses

under section 403, not to exceed then current Federal Government per diem rates.

* * * * * * *

SEC. 410. AUTHORIZATION OF APPROPRIATIONS.

(a) * * *

(b) MATCHING FUNDS.—For the purposes of section 405 of this title, during the five-year period [following the date of the enactment of this title,] *beginning October 1, 1992,* there are authorized to be appropriated $1,000,000 annually to the Secretary of Agriculture to be made available to the Foundation to match, on a one-for-one basis, private contributions made to the Foundation.

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–267

MAKING APPROPRIATIONS FOR FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1994, AND MAKING SUPPLEMENTAL APPROPRIATIONS FOR SUCH PROGRAMS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1993, AND FOR OTHER PURPOSES

SEPTEMBER 28, 1993.—Ordered to be printed.

Mr. OBEY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2295]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2295) "making appropriations for the Foreign Operations, Export Financing, and Related Programs for the fiscal year ending September 30, 1994, and making supplemental appropriations for such programs for the fiscal year ending September 30, 1993, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 4, 6, 8, 9, 10, 11, 16, 19, 22, 23, 26, 27, 28, 30, 44, 48, 59, 60, 62, 65, 70, 72, 78, 80, 81, 84, 86, 88, 95, 103, 107, 108, 109, 110, 113, 114, 116, 117, 118, 119, and 121.

That the House recede from its disagreement to the amendments of the Senate numbered 7, 12, 13, 14, 18, 20, 21, 31, 35, 36, 37, 38, 39, 40, 41, 43, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 61, 64, 66, 69, 71, 74, 75, 76, and agree to the same.

Amendment numbered 2:

That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided, That one quarter of such funds may be obligated only after April 1, 1994: Provided further, That one quarter of such funds may be obligated only after September 1, 1994: Provided further, That not more than 21 days prior to the obligation of each such sum, the Secretary shall submit a certification to the Committees on Appropriations that the Bank has not approved any loans*

to Iran since October 1, 1993, or the President of the United States certifies that withholding of these funds is contrary to the national interest of the United States; and the Senate agree to the same.

Amendment numbered 3:

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided, That such funds shall be made available to the Facility by the Secretary of the Treasury if the Secretary determines (and so reports to the Committees on Appropriations) that the Facility implementing agencies have: (1) established clear procedures ensuring public availability of documentary information on all Facility projects and associated projects of the Facility implementing agencies; and (2) have developed or are in the process of developing clear procedures ensuring that affected peoples in recipient countries are consulted on all aspects of identification, preparation, and implementation of Facility projects and associated projects of the Facility implementing agencies: Provided further, That in the event the Secretary of the Treasury has not made such determinations by September 30, 1994, funds appropriated under this heading for the GEF shall be transferred to the Agency for International Development and used for activities associated with the GEF and the Global Warming Initiative*; and the Senate agree to the same.

Amendment numbered 5:

That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided, That the Secretary of the Treasury shall instruct the United States Executive Director to each of the international financial institutions (IFIs) to use the voice and vote of the United States to urge that each of the IFIs establish an independent entity appointed by and reporting to the executive board, with the authority and functions of an inspector general; Provided further, That on or before March 31, 1994, the Secretary of the Treasury shall submit a report to the Committees on Appropriations on the progress being made towards establishing such entities: Provided further, That the Secretary of the Treasury shall consult and work with appropriate international fora to establish an independent commission to review the operations and management structure of the IFIs: Provided further, That the commission, which should be funded from the budgets of the IFIs, would be comprised of members of various nationalities who are familiar with the management and operations of the IFIs: Provided further, That on or before March 31, 1994, the Secretary of the Treasury shall submit a report to the Committees on Appropriations on the progress being made towards establishing the commission*; and the Senate agree to the same.

Amendment numbered 15:

That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided further, That of the funds appropriated under this head-*

ing that are made available for the United Nations Children's Fund (UNICEF), 75 per centum (less amounts withheld consistent with section 307 of the Foreign Assistance Act of 1961 and section 516 of this Act) shall be obligated and expended no later than thirty days after the date of enactment of this Act and 25 per centum of which shall be expended within thirty days from the start of UNICEF's fourth quarter of operations for 1994; and the Senate agree to the same.

Amendment numbered 17:

That the House recede from its disagreement to the amendment of the Senate numbered 17, and agreed to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *: Provided further, That none of the funds appropriated under this heading that are made available to the United Nations Population Fund (UNFPA) shall be made available for activities in the People's Republic of China: Provided further, That not more than $40,000,000 of the funds appropriated under this heading may be made available to the UNFPA: Provided further, That not more than one-half of this amount may be provided to UNFPA before March 1, 1994, and that no later than February 15, 1994, the Secretary of State shall submit a report to the Committees on Appropriations indicating the amount UNFPA is budgeting for the People's Republic of China in 1994: Provided further, That any amount UNFPA plans to spend in the People's Republic of China in 1994 above $10,000,000, shall be deducted from the amount of funds provided to UNFPA after March 1, 1994: Provided further, That with respect to any funds appropriated under this heading that are made available to UNFPA, UNFPA shall be required to maintain such funds in a separate account and not commingle them with any other funds*; and the Senate agree to the same.

Amendment numbered 24:

That the House recede from its disagreement to the amendment of the Senate numbered 24, and agree to the same with an amendment, as follows:

Retain the matter proposed in said amendment, amended as follows:

In lieu of "$2,000,000" named in said amendment, insert: *$1,000,000*, and

In lieu of "$50,000,000" named in said amendment, insert: *$25,000,000*; and the Senate agree to the same.

Amendment numbered 25

That the House recede from its disagreement to the amendment of the Senate numbered 25, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$501,760,000: Provided, That none of the funds appropriated by title II of this Act may be obligated after March 31, 1994 unless the Administration has acted to implement those recommendations of the Report of the National Performance Review which can be accomplished without legislation and has submitted the necessary package of proposed legislation to accomplish the following remaining recommendations:*

(1) reform of foreign assistance programs and rewriting of the Foreign Assistance Act of 1961,

(2) reform of the personnel systems of the Agency for International Development aimed at integrating the multiple personnel systems and reviewing benefits under each system,

(3) lifting of some current Agency personnel restrictions and giving managers authority to manage staff resources more efficiently and effectively,

(4) reengineering of project and program management processes to emphasize innovation, flexibility, beneficiary participation, pilot and experimental programs, incentive systems linked to project and program performance, processes for continuing critical review and evaluation, and improved coordination systems with other donors, and

(5) a planned reduction of a specific number of Agency missions during the next three years, of which at least twelve shall be terminated during the first year.

For additional expenses only to carry out the provisions of section 667 related to termination or phasing down of overseas missions of the Agency of International Development and related to improving the information and financial management systems and customer service of the Agency for International Development as recommended by the Report of the National Performance Review, $3,000,000 to remain available until expended: Provided, That funds appropriated by this paragraph may be made available notwithstanding any other provision of law, shall not be transferred or utilized for any other purpose, and shall be in addition to amounts otherwise available for such purposes; and the Senate agree to the same.

Amendment numbered 29:

That the House recede from its disagreement to the amendment of the Senate numbered 29, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided further, That commitments to guarantee loans under this heading may be entered into notwithstanding the second and third sentences of section 222(a) and, with regard to programs for Eastern Europe and programs for the benefit of South Africans disadvantaged by apartheid, section 223(j) of the Foreign Assistance Act of 1961*; and the Senate agree to the same.

Amendment numbered 32:

That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *: Provided further, That not less than $15,000,000 of the funds appropriated under this heading shall be made available for Cyprus to be used only for scholarships, bicommunal projects, and measures aimed at the reunification of the island and designed to reduce tensions, and promote peace and cooperation between the two communities on Cyprus*; and the Senate agree to the same.

Amendment numbered 33:

That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended as follows:

In lieu of "$19,600,000," insert: *up to $19,600,000,* ; and the Senate agree to the same.

Amendment numbered 34:

That the House recede from its disagreement to the amendment of the Senate numbered 34, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$390,000,000*; and the Senate agree to the same.

Amendment numbered 42:

That the House recede from its disagreement to the amendment of the Senate numbered 42, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$3,149,279,000*; and the Senate agree to the same.

Amendment numbered 63:

That the House recede from its disagreement to the amendment of the Senate numbered 63, and agree to the same with an amendment, as follows:

Retain the matter proposed in said amendment, amended as follows:

After the words "necessary appropriations" in said amendment, insert: *: Provided further, That pursuant to the tenth replenishment of the resources of the International Development Association, $2,500,000,000 is authorized, to be appropriated*; and the Senate agree to the same.

Amendment numbered 67:

That the House recede from its disagreement to the amendment of the Senate numbered 67, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert: *and up to $20,000,000 may be made available for stockpiles in Thailand*; and the Senate agree to the same.

Amendment numbered 68:

That the House recede from its disagreement to the amendment of the Senate numbered 68, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

RESCISSIONS

SEC. 545. (a) Of the unexpended balances of funds (including earmarked funde) made available for fiscal years 1987 through 1993 to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, $203,000,000 are rescinded.

(b) Of the unexpended balances of funds (including earmarked funds) appropriated for fiscal year 1993 and prior fiscal years to carry out the provisions of sections 103 through 106 of the Foreign Assistance Act of 1961, $5,100,000 are rescinded.

And the Senate agree to the same.

Amendment numbered 73:

That the House recede from its disagreement to the amendment of the Senate numbered 73, and agree to the same with an amendment, as follows:

Retain the matter proposed in said amendment, amended as follows:

In lieu of "$10,000,000" named in said amendment, insert: *$6,000,000*, and

In lieu of "$5,000,000" named in said amendment, insert: *$3,000,000*; and the Senate agree to the same.

Amendment numbered 77:

That the House recede from its disagreement to the amendment of the Senate numbered 77, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

EXCESS DEFENSE ARTICLES

SEC. 555. The authority of section 519 of the Foreign Assistance Act of 1961, as amended, may be used in fiscal year 1994 to provide nonlethal excess defense articles to countries for which United States foreign assistance has been requested and for which receipt of such articles was separately justified for the fiscal year, without regard to the restrictions in subsection (a) of section 519.

And the Senate agree to the same.

Amendment numbered 79:

That the House recede from its disagreement to the amendment of the Senate numbered 79, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 557." named in said amendment, insert: *SEC. 556.* ; and the Senate agree to the same.

Amendment numbered 82:

That the House recede from its disagreement to the amendment of the Senate numbered 82, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 560." named in said amendment, insert: *SEC. 557.* ; and the Senate agree to the same.

Amendment numbered 83:

That the House recede from its disagreement to the amendment of the Senate numbered 83, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 561." named in said amendment, insert: *SEC. 558.* ; and the Senate agree to the same.

Amendment numbered 85:

That the House recede from its disagreement to the amendment of the Senate numbered 85, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 563." named in said amendment, insert: *SEC. 559.* ; and the Senate agree to the same.

Amendment numbered 87:

That the House recede from its disagreement to the amendment of the Senate numbered 87, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

ASSISTANCE FOR THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION

SEC. 560. (a) Funds appropriated by this Act under the heading "Assistance for the New Independent States of the Former Soviet Union", and funds appropriated by the Supplemental Appropriations for the New Independent States of the Former Soviet Union Act, 1993, should be allocated for economic assistance and for related programs as follows:

(1) $893,820,000 for the purpose of private sector development, including through the support of bilateral and multilateral enterprise funds, technical assistance and training, agribusiness programs and agricultural credit, financing and technical assistance for small and medium private enterprises, and privatization efforts.

(2) $125,000,000 for the purpose of a special privatization and restructuring fund: Provided, That the United States' contribution for such fund shall not exceed one-quarter of the aggregate amount being made available for such fund by all countries.

(3) $185,000,000 for the purpose of enhancing trade with and investment in the New Independent States of the former Soviet Union, including through energy and environment commodity import assistance, costs of loans and loan guarantees and the provision of trade and investment technical assistance.

(4) $295,000,000 for the purpose of enhancing democratic initiatives, including through the support of a comprehensive program of exchanges and training, assistance designed to foster the rule of law, and encouragement of independent media.

(5) $190,000,000 for the purpose of supporting troop withdrawal, including through the support of an officer resettlement program, and technical assistance for the housing sector.

(6) $285,000,000 for the purpose of supporting the energy and environment sectors, including such programs as nuclear reactor safety, and technical assistance to foster the efficiency and privatization of the energy sector and making that sector more environmentally responsible.

(7) $239,000,000 for humanitarian assistance purposes, including to provide vaccines and medicines for vulnerable populations, to assist in the establishment of a sustainable pharmaceutical industry, to provide food assistance, and to meet other urgent humanitarian needs.

(b) With respect to funds allocated under subsection (a) of this section, notifications provided under section 515 of this Act shall reflect the categories listed in subsection (a): Provided, That the Committees on Appropriations shall be consulted with respect to the sub-

mission of notifications which would cause any category to exceed the allocation reflected in subsection (a).

(c) Funds made available in this Act for assistance to the New Independent States of the former Soviet Union shall be provided to the maximum extent feasible through the private sector, including private voluntary organizations and nongovernmental organizations functioning in the New Independent States.

(d) Of the funds appropriated by this or any other Act, not less than $300,000,000 should be made available for Ukraine.

(e) None of the funds appropriated by this Act shall be transferred to the Government of Russia—

(1) unless that Government is making progress in implementing comprehensive economic reforms based on market principles, private ownership, negotiating repayment of commercial debt, respect for commercial contracts, and equitable treatment of foreign private investment; and

(2) if that Government applies or transfers United States assistance to any entity for the purpose of expropriating or seizing ownership or control of assets, investments, or ventures.

(f) Funds may be furnished without regard to subsection (e) if the President determines that to do so is in the national interest.

And the Senate agree to the same.

Amendment numbered 89:

That the House recede from its disagreement to the amendment of the Senate numbered 89, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

(g) None of the funds appropriated by this Act shall be made available to any government of the New Independent States of the former Soviet Union if that government directs any action in violation of the territorial integrity or national sovereignty of any other New Independent State, such as those violations included in Principle Six of the Helsinki Final Act: Provided, That such funds may be made available without regard to the restriction in this subsection if the President determines that to do so is in the national interest of the United States: Provided further, That the restriction of this subsection shall not apply to the use of such funds for the provision of assistance for purposes of humanitarian, disaster and refugee relief: Provided further, That thirty days after the date of enactment of this Act, and then annually thereafter, the Secretary of State shall report to the Committees on Appropriations on steps taken by the governments of the New Independent States concerning violations referred to in this subsection: Provided further, That in preparing this report the Secretary shall consult with the United States Representative to the Conference on Security and Cooperation in Europe.

(h) None of the funds appropriated by this Act for the New Independent States of the former Soviet Union shall be made available for any state to enhance its military capability: Provided, That this restriction does not apply to demilitarization, defense conversion or non-proliferation programs, or programs conducted under subsection (a)(5) of this section.

And the Senate agree to the same.

Amendment numbered 90:

That the House recede from its disagreement to the amendment of the Senate numbered 90, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 566." named in said amendment, insert: *SEC. 561.* ; and the Senate agree to the same.

Amendment numbered 91:

That the House recede from its disagreement to the amendment of the Senate numbered 91, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 567." named in said amendment, insert: *SEC. 562.* ; and the Senate agree to the same.

Amendment numbered 92:

That the House recede from its disagreement to the amendment of the Senate numbered 92, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 568." named in said amendment, insert: *SEC. 563.* ; and the Senate agree to the same.

Amendment numbered 93:

That the House recede from its disagreement to the amendment of the Senate numbered 93, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 569." named in said amendment, insert: *SEC. 564.* , and

In lieu of "$50,000,000 shall" named in said amendment, insert: *up to $50,000,000 should*; and the Senate agree to the same.

Amendment numbered 94:

That the House recede from its disagreement to the amendment of the Senate numbered 94, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

HUMANITARIAN ASSISTANCE FOR ARMENIA

SEC. 565. Of the funds appropriated by titles II and VI of this Act (1) to carry out the provisions of chapter 1 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, and (2) under the headings "Assistance for the New Independent States of the Former Soviet Union" and "Operations and Maintenance, Defense Agencies", $18,000,000 should be made available for urgent humanitarian assistance for Armenia.

And the Senate agree to the same.

Amendment numbered 96:

That the House recede from its disagreement to the amendment of the Senate numbered 96, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 572." named in said amendment, insert: *SEC. 566.* ; and the Senate agree to the same.

Amendment numbered 97:

That the House recede from its disagreement to the amendment of the Senate numbered 97, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 573." named in said amendment, insert: *SEC. 567.* ; and the Senate agree to the same.

Amendment numbered 98:

That the House recede from its disagreement to the amendment of the Senate numbered 98, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 574." named in said amendment, insert: *SEC. 568.* ; and the Senate agree to the same.

Amendment numbered 99:

That the House recede from its disagreement to the amendment of the Senate numbered 99, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 575." named in said amendment, insert: *SEC. 569.* ; and the Senate agree to the same.

Amendment numbered 100:

That the House recede from its disagreement to the amendment of the Senate numbered 100, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

SPECIAL DEBT RELIEF FOR THE POOREST

SEC. 570. (a)(1) AUTHORITY TO REDUCE DEBT.—The President may reduce amounts owed to the United States (or any agency of the United States) by an eligible country as a result of—

(A) guarantees issued under sections 221 and 222 of the Foreign Assistance Act of 1961; or

(B) credits extended or guarantees issued under the Arms Export Control Act.

(2) LIMITATIONS.—

(A) The authority provided by paragraph (1) may be exercised only to implement multilateral official debt relief and referendum agreements, commonly referred to as "Paris Club Agreed Minutes".

(B) The authority provided by paragraph (1) may be exercised only in such amounts or to such extent as is provided in advance by appropriations Acts.

(C) The authority provided by paragraph (1) may be exercised only with respect to countries with heavy debt burdens that are eligible to borrow from the International Development Association, but not from the International Bank for Reconstruction and Development, commonly referred to as "IDA-only" countries.

(3) CONDITIONS.—The authority provided by paragraph (1) may be exercised only with respect to a country whose government—

(A) does not have an excessive level of military expenditures;

(B) has not repeatedly provided support for acts of international terrorism;

(C) is not failing to cooperate on international narcotics control matters; and

(D) (including its military or other security forces) does not engage in a consistent pattern of gross violations of internationally recognized human rights.

(4) AVAILABILITY OF FUNDS.—The authority provided by paragraph (1) may be used only with regard to funds appropriated by this Act under the heading "Debt Restructuring".

(5) CERTAIN PROHIBITIONS INAPPLICABLE.—A reduction of debt pursuant to paragraph (1) shall not be considered assistance for purposes of any provision of law limiting assistance to a country.

(b) SPECIAL DEBT RELIEF FOR THE POOREST, MOST HEAVILY INDEBTED COUNTRIES.—The Export-Import Bank Act of 1945 (12 U.S.C. 635–635i-3) is amended by adding at the end the following:

"SEC. 11. SPECIAL DEBT RELIEF FOR THE POOREST, MOST HEAVILY INDEBTED COUNTRIES.

"(a) DEBT REDUCTION AUTHORITY.—The President may reduce amounts of principle and interest owed by any eligible country to the Bank as a result of loans or guarantees made under this Act.

"(b) LIMITATIONS.—

"(1) TYPES OF DEBT REDUCTION.—The authority provided by subsection (a) may be exercised only to implement multilateral agreements to reduce the burden of official bilateral debt as set forth in the minutes of the so-called 'Paris Club' (also known as 'Paris Club Agreed Minutes').

"(2) ELIGIBLE COUNTRIES.—

"(A) DEFINITION.—As used in subsection (a), the term "eligible country" means any country that—

"(i) has excessively burdensome external debt;

"(ii) is eligible to borrow from the International Development Association; and

"(iii) is not eligible to borrow from the International Bank for Reconstruction and Development.

"(B) DETERMINATIONS.—Subject to subparagraph (A), the President may determine whether a country is an eligible country for purposes of subsection (a).

"(c) CONDITIONS.—The authority provided by this section may be exercised only with respect to a country whose government—

"(1) does not have an excessive level of military expenditures;

"(2) has not repeatedly provided support for acts of international terrorism;

"(3) is not failing to cooperate on international narcotics control matters; and

"(4) (including its military or other security forces) does not engage in a consistent pattern of gross violations of internationally recognized human rights.

"(d) APPROPRIATIONS.—The authority provided by subsection (a) may be exercised only in such amounts or to such extent as is provided in advance in appropriations Acts.".

(c) SENSE OF CONGRESS.—It is the sense of Congress that the President should seriously consider requesting debt reduction funds sufficient to provide debt reduction to eligible countries in accordance with the so-called "Trinidad Terms".

And the Senate agree to the same.

Amendment numbered 101:

That the House recede from its disagreement to the amendment of the Senate numbered 101, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 577." named in said amendment, insert: *SEC. 571.* ; and the Senate agree to the same.

Amendment numbered 102:

That the House recede from its disagreement to the amendment of the Senate numbered 102, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

FOREIGN MILITARY FINANCING DIRECT COMMERCIAL SALES POLICY

SEC. 572. The Secretary of Defense shall not implement changes in longstanding policy allowing use of Foreign Military Financing for direct commercial sales unless and until all parties affected by any such changes have been fully consulted and given opportunity for input into any such policy changes.

In this process the Secretary of Defense shall also consult with the Committees on Appropriations, the House Committee on Foreign Affairs, the Senate Committee on Foreign Relations, the Committees on Armed Services, and the relevant agencies or departments of the Executive Branch.

And the Senate agree to the same.

Amendment numbered 104:

That the House recede from its disagreement to the amendment of the Senate numbered 104, and agree to the same with an amendment, as follows:

Retain the matter proposed in said amendment, amended as follows:

In lieu of "SEC. 580." named in said amendment, insert: *SEC. 573.* and

In lieu of subsection (c) of said amendment, insert:

(c) Whenever the waiver of subsection (b) is exercised, the President shall submit to the appropriate congressional committees a report with respect to the furnishing of such assistance. Any such report shall include a detailed explanation of the assistance to be provided, including the estimated dollar amount of such assistance, and an explanation of how the assistance furthers United States national interests.

And the Senate agree to the same.

Amendment numbered 105:

That the House recede from its disagreement to the amendment of the Senate numbered 105, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

WITHHOLDING OF ASSISTANCE FOR PARKING FINES OWED BY FOREIGN COUNTRIES

SEC. 574. (a) IN GENERAL.—Of the funds made available for a foreign country under part I of the Foreign Assistance Act of 1961, an amount equivalent to 110 percent of the total unpaid fully adjudicated parking fines and penalties owed to the District of Columbia by such country as of the date of enactment of this Act shall be withheld from obligation for such country until the Secretary of State certifies and reports in writing to the appropriate congressional committees that such fines and penalties are fully paid to the government of the District of Columbia.

(b) DEFINITION.—For purposes of this section, the term "appropriate congressional committees" means the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives.

And the Senate agree to the same.

Amendment numbered 106:

That the House recede from its disagreement to the amendment of the Senate numbered 106, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

UKRAINE/RUSSIA STABILIZATION PARTNERSHIPS

SEC. 575. Of the funds appropriated by this Act under the headings "Assistance for the New Independent States of the Former Soviet Union" and "Operations and Maintenance, Defense Agencies", and allocated under section 560(a) paragraphs (1) and (6), $35,000,000 should be made available for a program of cooperation between scientific and engineering institutes in the New Independent States of the Former Soviet Union and national laboratories and other qualified academic institutions in the United States designed to stabilize the technology base in the cooperating states as each strives to convert defense industries to civilian applications: Provided, That priority be assigned to programs in support of international agreements that prevent and reduce proliferation of weapons of mass destruction: Provided further, That the President may enter into agreements involving private United States industry that include cost share arrangements where feasible: Provided further, That the President may participate in programs that enhance the safety of power reactors: Provided further, That the intellectual property rights of all parties to a program of cooperation be protected: Provided further, That funds made available by this section may be reallocated in accordance with the authority of section 560(b) of this Act.

And the Senate agree to the same.

Amendment numbered 111:

That the House recede from its disagreement to the amendment of the Senate numbered 111, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

RUSSIAN ASSISTANCE TO CUBA

SEC. 576. Of the funds appropriated by this Act under the headings "Assistance for the New Independent States of the Former Soviet Union" and "Operations and Maintenance, Defense Agencies", $380,000,000 shall not be available for obligation for Russia unless the President certifies on April 1, 1994, that the government of Russia has not provided assistance to Cuba during the preceding 18 months: Provided, That funds may be furnished without regard to the provisions of this section if the President determines that to do so is in the national interest.

And the Senate agree to the same.

Amendment numbered 112:

That the House recede from its disagreement to the amendment of the Senate numbered 112, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment, amended as follows:

In lieu of "SEC. 588." named in said amendment, insert: *SEC. 577.* ; and the Senate agree to the same.

Amendment numbered 115:

That the House recede from its disagreement to the amendment of the Senate numbered 115, and agree to the same with an amendment, as follows:

Retain the matter proposed in said amendment, amended as follows:

In lieu of "SEC. 591." named in said amendment, insert: *SEC. 578.* ; and

In lieu of "January 1, 1994," in subsection (a) of said amendment, insert: *February 15, 1994;*, and

In lieu of "January 1, 1994," in subsection (b) of said amendment, insert: *February 15, 1994,*; and the Senate agree to the same.

Amendment numbered 120:

That the House recede from its disagreement to the amendment of the Senate numbered 120, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

RUSSIAN REFORM

Sec. 579. (a) Findings.—The Congress finds that—

(1) President Yeltsin has consistently tried to push forward economic and political reform;

(2) President Yeltsin was given a mandate by the Russian people to hold elections and continue the process of economic reform;

(3) Boris Yeltsin is the first and only popularly elected president of Russia, and the parliament of Russia is a holdover from the Soviet regime;

(4) the conservative parliament has consistently impeded political and economic progress in Russia;

(5) slow progress on economic reform has prompted the IMF to review its disbursement of Russia's second tranche from the Systemic Transformation Facility;

(6) political and economic reform has been impeded by the actions of the hardline parliament; and

(7) corruption is rampant and is impeding economic and political reform and must be vigorously and effectively combated.

(b) Sense of the Congress.—It is the sense of the Congress that—

(1) the Congress supports President Yeltsin in his effort to continue the reform process in Russia, including his call for new parliamentary elections consistent with the results of the April 25, 1993 referendum; and

(2) further United States Government economic assistance should be provided in accordance with President Yeltsin's call for and holding of free, fair, and democratic parliamentary elections.

And the Senate agree to the same.

DAVID R. OBEY,
SIDNEY R. YATES,
CHARLES WILSON,
JOHN W. OLVER,
NANCY PELOSI,
ESTEBAN TORRES,
NITA M. LOWEY,
JOSE E. SERRANO,
WILLIAM H. NATCHER,
BOB LIVINGSTON,
JOHN PORTER,
JIM LIGHTFOOT,
SONNY CALLAHAN,
JOSEPH M. MCDADE,
Managers on the Part of the House.

MITCH MCCONNELL,
ALFONSE M. D'AMATO,
ARLEN SPECTER,
DON NICKLES,
CONNIE MACK,
PHIL GRAMM,
MARK O. HATFIELD,
PATRICK J. LEAHY,
DANIEL K. INOUYE,
DENNIS DECONCINI,
FRANK R. LAUTENBERG,
TOM HARKIN,
BARBARA A. MIKULSKI,
DIANNE FEINSTEIN,
ROBERT C. BYRD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2295) making appropriations for Foreign Operations, Export Financing, and Related Programs for the fiscal year ending September 30, 1994, and making supplemental appropriations for such programs for the fiscal year ending September 30, 1993 and for other purposes submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE I—MULTILATERAL ECONOMIC ASSISTANCE FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL FINANCIAL INSTITUTIONS

CONTRIBUTION TO THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Amendment No. 1: Appropriates $55,821,000 as proposed by the House instead of $27,910,500 as proposed by the Senate.

The conferees' agreement on the reduction in paid-in and callable capital funds for the World Bank directly reflects a reduction of the amount of funds that the World Bank has lent to Iran during 1993. The reduction also reflects the conferees' strong belief that additional progress needs to be made by the World Bank in promulgating and implementing environmental reforms.

Amendment No. 2: Inserts language permitting the Secretary of Treasury to obligate 1) one-half of the funds made available for paid-in capital of the World Bank on October 1, 1993, 2) one-quarter of the funds after April 1, 1994, and 3) one-quarter of the funds after September 1, 1994. Not more than twenty-one days prior to the April and September obligations, the Secretary of the Treasury must submit a certification that the World Bank has approved no loans to Iran since October 1, 1993 or the President must certify that withholding of the funds is contrary to the national interest

Amendment No. 3: Inserts language conditioning funds for the Global Environment Facility. The conferees agree that the Secretary of Treasury is to consult with the appropriate committees of Congress prior to obligation of funds to the Global Environment Facility.

The conferees continue to believe that the GEF must establish procedures ensuring public availability of information on GEF projects and associated projects of the GEF implementing agencies. Without broad, timely access to technical information, the public is unable to have meaningful input regarding GEF activities. The

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Conferees also believe that the participation of affected peoples in the identification, preparations, and implementation of GEF projects is essential.

The conferees are concerned that the World Bank's new information disclosure policy, as written, does not provide adequate public access to relevant technical documents. The conferees are also concerned that existing procedures do not adequately ensure public participation throughout the project cycle. The conferees recognize that the World Bank is making efforts to address these problems, and that the sufficiency of the Bank's procedures on information disclosure and public participation will depend, in part, on the manner in which they are implemented.

Amendment No. 4: Permits subscription for callable capital portion of the United States share of increases in the capital stock of the International Bank for Reconstruction and Development totalling $1,804,979,000, as proposed by the House instead of $902,439,500 as proposed by the Senate.

Amendment No. 5: The conferees strongly support the international financial institutions and recognize their continuing contribution to world stability and economic and political development. Because of this strong commitment, because these institutions are facing unprecedented challenges, and because growing public criticism has resulted in declining political support for the IFIs in the United States and elsewhere, the conferees believe that it is imperative that IFIs undergo a thorough review of their operations and procedures.

The most public criticisms have focused on continuing executive travel, pay and benefit excesses, and office building construction and maintenance costs. These criticisms have created an image of IFI employees enjoying exceptionally generous salaries and perquisites while in the employ of institutions funded with public monies, even while poverty and misery in the countries they are supposed to be helping worsen. This image is not one that will sustain support for the IFIs in the United States Congress in future years.

Of even greater concern to the conferees is the apparent declining quality of the loan portfolios of at least several of the IFIs. The conferees find the reported institutional emphasis on "moving money" as opposed to quality implementation of projects to be totally inappropriate. The conferees believe that program and project quality, including compliance with loan conditionality, could be enhanced by shifting a significant number of personnel of these institutions into the field to work closely with recipient governments and local peoples. A reverse "brain drain" should have many benefits. The conferees also are concerned about the capacity of the executive boards to provide oversight and direction, and about the ability of the office of the president to run these institutions rather than being captured by entrenched bureaucracies.

Therefore, in order to stop waste, fraud and abuse, identify improvements in economy and efficiency, and thereby prevent further erosion of public support for the IFIs, the conferees believe that each IFI should immediately establish an independent entity with the authority and functions of an inspector general. The conferees are aware that the World Bank currently has an Operations Eval-

uation Department, and Internal Auditor, and recently announced the creation of an independent inspection panel. However, none of these appears to have the full authority and functions of an inspector general. The conferees believe that the authority and functions of one or more of these entities should be expanded, or a new entity created, to review the performance of the institution in achieving the goals and objectives as set forth in the institution's own policy guidelines; provide recommendations for improving the economy, efficiency, and effectiveness of operational programs; and detect and prevent waste, fraud and abuse in programs and functions. Such an entity should be established for each IFI. The conferees have instructed the Secretary of the Treasury to pursue this matter within each IFI and to submit a report on progress being made.

Furthermore, if the IFIs are to perform effectively as the engines of economic growth in the developing countries, substantial reforms will be required. In order to develop a reform agenda, an independent review of IFI operations and management is urgently needed. The conferees have instructed the Secretary of the Treasury to consult and work with appropriate international fora, to establish an independent commission to examine and report on operations and management within the IFIs. The administrative and other costs of the commission, which should be comprised of members of various nationalities supported by staff, would be paid with funds from the budgets of each of the IFIs. At a minimum, the commission should examine and consider, for each IFI, the following:

—Substantial decentralization of IFI personnel and activities to the countries to which loans are made;

—Current administrative policies and cost structures, including those related to salaries, benefits, travel expenses, building and building maintenance costs;

—Changes in structure, terms and procedures that would strengthen the ability of the executive boards to monitor policy and program results and to hold the managers of these institutions accountable for the same, including the addition of secretariats to assist the executive boards;

—Changes in staffing and procedures which would strengthen the office of the presidency of these institutions in setting policy, program and administrative direction and in ensuring proper implementation of such direction.

In conducting this review, the commission should consult with the executive directors and managements of the IFI, in addition to donor and recipient governments and nongovernmental organizations. The commission should report its findings and recommendations to the executive boards of each IFI. The Conferees have instructed the Secretary of the Treasury to submit a report on progress being made towards establishing the commission.

CONTRIBUTION TO THE INTERNATIONAL DEVELOPMENT ASSOCIATION

Amendment No. 6: Appropriates $1,024,332,000 for the International Development Association proposed by the House instead of $957,142,857 as proposed by the Senate.

Amendment No. 7: Deletes House language making monies provided for International Development Association subject to authorization.

Amendment No. 8: Deletes Senate language calling for an inspector general in the International Development Association. The inspector general issue is included in Amendment No. 5.

CONTRIBUTION TO THE INTERNATIONAL FINANCE CORPORATION

Amendment No. 9: Appropriates $35,761,500 for the International Finance Corporation proposed by the House instead of $17,880,750 as proposed by the Senate.

CONTRIBUTION TO THE ENTERPRISE FOR THE AMERICAS MULTILATERAL INVESTMENT FUND

Amendment No. 10: Appropriates $75,000,000 for the United States contribution to the Multilateral Investment Fund as proposed by the House instead of $50,000,000 as proposed by the Senate.

CONTRIBUTION TO THE ASIAN DEVELOPMENT BANK

Amendment No. 11: Appropriates $13,026,366 for the paid-in capital of the Asian Development Bank as proposed by the House instead of $2,000,000 as proposed by the Senate.

CONTRIBUTION TO THE ASIAN DEVELOPMENT FUND

Amendment No. 12: Deletes House language making the funds for the Fund subject to authorization.

CONTRIBUTION TO THE AFRICAN DEVELOPMENT FUND

Amendment No. 13: Appropriates $135,000,000 for the United States contribution to the African Development Fund as proposed by the Senate instead of $132,300,000 as proposed by the House.

INTERNATIONAL ORGANIZATIONS AND PROGRAMS

Amendment No. 14: Appropriates $360,628,000 for the International Organizations and Programs as proposed by the Senate instead of $339,500,000 as proposed by the House.

UNICEF

Amendment No. 15: Deletes Senate language earmarking funds for UNICEF. The conferees recommend and expect that $100,000,000 will be provided for UNICEF in fiscal year 1994. The conferees believe that the United Nations Children's Fund continues to be one of the highest priorities in the foreign assistance program. Few other programs have such widespread and bipartisan support both in Congress and with the American people.

Given this support, the conferees welcome the Administration's request level of $100,000,000 for UNICEF in fiscal year 1994. As UNICEF role expands in addressing crisis situations throughout the world, the conferees urge that future budget requests reflect that reality.

The conferees also include bill language that requires disbursement of UNICEF funds on a specific timetable.

WORLD FOOD PROGRAM

Amendment No. 16: Deletes Senate language earmarking funds for the World Food Program. The conferees urge AID to make every effort to provide $3,000,000 for the World Food Program in fiscal year 1994. The conferees recognize that the World Food Program plays an essential role in providing food and other aid to the neediest people in the world. The World Food Program faces unprecedented demands for food aid and emergency humanitarian assistance in conflict zones, particularly in the former Yugoslavia and sub-Saharan Africa.

UNFPA

Amendment No. 17: Inserts language requiring that no funds made available for a U.S. contribution to the United Nations Population Fund (UNFPA) may be used for activities in China. The conferees also recommend that no more than $40,000,000 be made available to the UNFPA in fiscal year 1994. This represents a $10,000,000 reduction from the $50,000,000 requested by the President and recommended in the Senate report, and is equal to the amount the conferees believe UNFPA plans to spend in the People's Republic of China in 1994.

The conferees have further required that not more than one-half of these funds may be provided to UNFPA before March 1, 1994, and that no later than February 15, 1994, the Secretary of State is to provide to the Appropriations Committees a report indicating the amount UNFPA is budgeting for China in 1994. Any amount UNFPA plans to spend in China above $10,000,000 shall be deducted from the amount of funds provided to UNFPA after March 1, 1994.

In addition, none of the funds made available to UNFPA may be used in China, and any funds made available to UNFPA must be maintained in a separate account and not commingled with any other funds.

TITLE II—BILATERAL ECONOMIC ASSISTANCE FUNDS APPROPRIATED TO THE PRESIDENT

AGENCY FOR INTERNATIONAL DEVELOPMENT DEVELOPMENT ASSISTANCE FUND

Amendment No. 18: Inserts language proposed by the Senate which permits funds provided under the Development Assistance Fund to be available for obligation for two years. The conferees agree that this authority will not be continued in the future if the extended obligation authority results in delays in program implementation.

The conferees urge AID to consider funding requests from the Hadassah Medical Organization. Hadassah uses grants to purchase American medical equipment and technology for use in its programs in areas of the world that are in need.

The conferees agree that programs such as the University Development Linkages Project (UDLP) are a valuable tool to strengthen development cooperation among United States institutions of higher education and those in the Agency for International Devel-

opment's partner countries. The conferees urge support for this program which would enable continuation of ongoing programs as well as new cooperative agreements to be awarded in fiscal year 1994.

COOPERATIVE DEVELOPMENT PROGRAM

Amendment No. 19: Deletes Senate language earmarking funds for various projects. The Conferees recommend that $10,000,000 be made available for cooperative projects among the United States, Israel, and developing countries. Of these funds $5,000,000 should be used for the Cooperative Development Program, $2,500,000 for cooperative research projects, and $2,500,000 for cooperative projects among the United States and Israel and the countries of Eastern Europe, the Baltic states, and the NIS.

POPULATION, DEVELOPMENT ASSISTANCE

Amendment No. 20: Inserts language proposed by the Senate which permits funds provided under the Population account to be available for two years. The conferees agree that this authority will not be continued in the future if the extended obligation authority results in delays in the program.

DEVELOPMENT FUND FOR AFRICA

Amendment No. 21: Inserts language proposed by the Senate which provides a waiver for activities supported by the Southern Africa Development Community.

WOMEN IN DEVELOPMENT

Amendment No. 22: Deletes Senate language earmarking funds for Women in Development. The conferees recognize that the full participation of women in, and the full contribution of women to, the development process are essential to achieving economic growth, a higher quality of life, and sustainable development in developing countries. The conferees believe that AID should expand its efforts to achieve these goals. The conferees therefore recommend and intend that $11,000,000 of development assistance funds, in addition to funds otherwise made available for such purposes, be used to encourage and promote the participation and integration of women as equal partners in the development process in developing countries. Of these funds, $6,000,000 should be made available as matching funds to support activities of AID's field missions to integrate women into their programs. AID should seek to ensure that country strategies, projects, and programs are designed so the percentage of women participants will be demonstrably increased.

INTERNATIONAL DISASTER ASSISTANCE

Amendment No. 23: Appropriates $145,985,000 as proposed by the House instead of $48,965,000 as proposed by the Senate. The conferees agree that the House level of funding will be needed to meet disaster related problems in the former Yugoslavia, Somalia and other situations in Africa, and around the world.

MICRO AND SMALL ENTERPRISE DEVELOPMENT PROGRAM ACCOUNT

Amendment No. 24: Appropriates $1,000,000 for the Micro and Small Enterprise Development Program Account, instead of $2,000,000 as proposed by the Senate. The House did not include any language for the Micro and Small Enterprise Development Program.

The Amendment also provides a limitation of $25,000,000 for loan guarantees for this program, instead of $50,000,000 as proposed by the Senate.

The conferees agree that the Administration is to provide notification to the Committees on Appropriations prior to obligation of funds for the Micro and Small Enterprise Development Program.

OPERATING EXPENSES OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT

Amendment No. 25: Appropriates $501,760,000 for Operating Expenses of the Agency for International Development as proposed by the House instead of $494,080.000 as proposed by the Senate.

The conferees insert language prohibiting the obligation of funds in title II of the bill after March 31, 1994 unless the Administration has acted to implement these recommendations of the Report of the National Performance Review which can be accomplished without legislation and has submitted the necessary package of proposed legislation to accomplish the remaining recommendations. These are:

1. Reform of foreign assistance programs and rewriting of the Foreign Assistance Act of 1961.
2. Reform of the personnel systems of the Agency for International Development aimed at integrating the multiple personnel systems and reviewing benefits under each system.
3. Lifting of some current Agency for International Development personnel restrictions and giving managers authority to manage staff resources more efficiently and effectively.
4. Reengineering of project and program management processes to emphasize innovation, flexibility, beneficiary participation, pilot and experimental programs, incentive systems linked to project and program performance, processes for continuing critical review and evaluation, and improved coordination systems with other donors.
5. A planned reduction of a specific number of Agency for International Development missions during the next three years, of which at least twelve are to be terminated during the first year.

The provision also appropriates an additional $3,000,000 to carry out functions related to the termination or phasing down of overseas missions for the Agency for International Development. The funding is also intended to provide resources for improving the information and financial management systems and customer service of the Agency for International Development. The funding has been provided in order to help implement the recommendations in the Report of the National Performance Review.

OPERATING EXPENSES OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT OFFICE OF INSPECTOR GENERAL

Amendment No. 26: Appropriates $39,118,000 for Operating Expenses of the Agency for International Development Office of Inspector General as proposed by the House instead of $38,518,940 as proposed by the Senate.

Amendment No. 27: Deletes language proposed by the Senate relating to prohibitions on relocating overseas regional offices and authorized position floors.

HOUSING GUARANTY PROGRAM ACCOUNT

Amendment No. 28: Deletes Senate language which allows funds provided in the bill for the Housing Guaranty Program to be used to subsidize loan principal and interest.

Amendment No. 29: Inserts language extending for one year the authorization for the Housing Guaranty Program. The provision also waives the program ceiling, and median income requirements for housing programs in Eastern Europe, and South Africa.

ECONOMIC SUPPORT FUND

FUNDING LEVEL

Amendment No. 30: Appropriates $2,364,562,000 for the Economic Support Fund as proposed by the House instead of $2,280,500,000 as proposed by the Senate.

WEST BANK/GAZA

The conferees are encouraged by the commitments made on September 9, 1993 as well as the declaration of principles signed on September 13, 1993 regarding Israel and the Palestine Liberation Organization.

The conferees understand that additional levels of assistance for the West Bank and Gaza may be necessary to help implement these undertakings. The conferees note that an international donors conference will be held to discuss assistance for the West Bank and Gaza. It is expected that European countries, Japan, the Gulf states, the World Bank and others will provide most of the financing required.

This year both the House and Senate have indicated strong support for the $25,000,000 in Economic Support Funds requested by the Administration for the West Bank and Gaza. The conferees have provided the higher level of funding in conference for the Economic Support Fund account and expect that this could be used to provide additional funding to assist Palestinians in support of the peace process underway.

JORDAN

The conferees recognize the critical role Jordan plays in the Middle East peace process. At the same time, the Jordanian record of compliance with United Nations sanctions has been of concern in the past, but has improved progressively. The President is requested to continue monitoring Jordan's record in this regard and to continue to consult with the Congress on Jordan's efforts to com-

ply with United Nations sanctions, any activities of concern, and U.S. efforts to ensure improved compliance on the part of Jordan.

ISRAEL AND EGYPT

Amendment No. 31: Inserts Senate language earmarking $1,200,000,000 for Israel and $815,000,000 for Egypt. The conferees also agree to include language requiring early disbursal on a grant basis for Israel, and a requirement that $200,000,000 be provided to Egypt as a Commodity Import Program.

CYPRUS/MIDDLE EAST REGIONAL COOPERATION PROGRAM

Amendment No. 32: Inserts language earmarking $15,000,000 in Economic Support Funds for Cyprus for scholarships, bicommunal projects, and measures aimed at the reunification of the island and designed to reduce tensions and promote peace and cooperation between the two communities in Cyprus. This is the same amount requested by the administration for fiscal year 1994, and the same amount recommended by both the Senate and House.

The conferees recommend that $7,000,000 in Economic Support Funds be provided for the Middle East Regional Cooperation Program. This program complements the ongoing Middle East multilateral peace talks on regional issues such as water, the environment, and economic cooperation. The conferees believe the recent progress towards peace between Israel and its Arab neighbors makes this program particularly relevant. It can help demonstrate that peaceful cooperation can yield tangible benefits for all involved.

INTERNATIONAL FUND FOR IRELAND

Amendment No. 33: Restores language stricken by the Senate and appropriates up to $19,600,000 for the International Fund for Ireland.

ASSISTANCE FOR EASTERN EUROPE AND THE BALTIC STATES

Amendment No. 34: Appropriates $390,000,000 for assistance for Eastern Europe and the Baltic States instead of $400,000,000 as proposed by the House and $360,000,000 as proposed by the Senate.

The conferees recommend that development assistance and SEED Act funds be made available for humanitarian assistance and for technical training in Albania, including activities in agriculture and in health. The conferees, in providing funding for graduate students from the former Soviet Union, also recommend $3,000,000 for the extension of similar activities in the countries of Central and Eastern Europe. In particular, the conferees recommend implementation of a program modelled after the Muskie Fellowship Program, for graduate students from Central and Eastern Europe interested in pursuing programs of study in American universities.

The conferees are aware of a program operated by the Milwaukee County Training Center for Local Democracy which is training Polish local government officials in decentralized management. The conferees urge AID to consider support of this project.

Amendment No. 35: Inserts Senate language allowing expenditure of funds for Eastern Europe and the Baltic States through related programs as well as for direct economic assistance.

ASSISTANCE FOR THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION

Amendment No. 36: Appropriates $603,820,000, for assistance for the New Independent States of the former Soviet Union as proposed by the Senate instead of $903,820,000 as proposed by the House. The conferees agree to provide the $300,000,000 originally approved by the House in this account as an increase to the subsidy appropriation of the Export Import Bank of the United States.

INDEPENDENT AGENCIES

AFRICAN DEVELOPMENT FOUNDATION

Amendment No. 37: Inserts Senate language allowing the Board of Directors of the African Development Foundation to waive the project level dollar limitation. A report to the Committees on Appropriations is required each time the waiver is exercised.

INTER-AMERICAN FOUNDATION

Amendment No. 38: Appropriates $30,960,000 for the Inter-American Foundation as proposed by the Senate instead of $30,340,000 as proposed by the House.

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL

Amendment No. 39: Inserts Senate language allowing the transfer of excess non-lethal property from an agency of the United States government to a foreign country for use in narcotics control programs. The exercise of this authority is subject to notification.

MIGRATION AND REFUGEE ASSISTANCE

Amendment No. 40: Inserts Senate language earmarking $80,000,000 for Soviet, Eastern European and other refugees resettling in Israel.

UNITED STATES EMERGENCY REFUGEE AND MIGRATION ASSISTANCE FUND

Amendment No. 41: Appropriates $49,261,000 for the United States Emergency Refugee and Migration Assistance Fund as proposed by the Senate instead of $19,261,000 as proposed by the House.

TITLE III—MILITARY ASSISTANCE FUNDS APPROPRIATED TO THE PRESIDENT

FOREIGN MILITARY FINANCING PROGRAM

GRANTS

Amendment No. 42: Appropriates $3,149,279,000 for Foreign Military Financing Program grants instead of $3,175,000,000 as proposed by the House and $3,123,558,000 as proposed by the Senate.

ISRAEL AND EGYPT

Amendment No. 43: Inserts Senate language earmarking $1,800,000,000 for Israel and $1,300,000,000 for Egypt. The conferees also agree to early disbursal of funds for Israel and various provisions related to research and development and procurement.

WITHHOLDING PROVISION

Amendment No. 44: Deletes Senate language relating to Foreign Military Financing for Egypt.

GREECE, PORTUGAL, AND TURKEY

Amendment No. 45: Deletes language proposed by the House. Inserts language proposed by the Senate which stipulates that funds made available under this heading shall be made available for Greece, Turkey, and Portugal only on a loan basis, and not to exceed the following; $283,500,000 only for Greece, $81,000,000 only for Portugal, and $405,000,000 only for Turkey. Authority to extend loans to Greece and Turkey is at a 7 to 10 ratio.

USE OF LOAN SUBSIDY FOR GRANTS

Amendment No. 46: Inserts language allowing use of the subsidy appropriations for Foreign Military Financing Grants, if countries eligible to receive loans decline to utilize such loans.

SPECIAL DEFENSE ACQUISITION FUND

Amendment No. 47: Inserts Senate language limiting the fiscal year 1993 obligational authority of the Special Defense Acquisition Fund to $160,000,000.

PEACEKEEPING OPERATIONS

Amendment No. 48: Appropriates $75,623,000 for Peacekeeping Operations as proposed by the House instead of $62,500,000 as proposed by the Senate.

TITLE IV—EXPORT ASSISTANCE

EXPORT-IMPORT BANK OF THE UNITED STATES

SUBSIDY APPROPRIATION

Amendment No. 49: Appropriates $1,000,000,000 for the subsidy appropriations for the Export-Import Bank as proposed by the Senate instead of $700,000,000 as proposed by the House.

The conferees encourage the Export-Import Bank to give particular attention to expanding participation by small and mid-sized businesses including women and minority-owned businesses in its programs. The Bank should do so by giving special emphasis to outreach efforts about its programs and services aimed at such firms. Furthermore, Bank policies should be evaluated to determine what modifications are feasible that would facilitate broader utilization by small and mid-sized firms.

The conferees agree to shift $300,000,000 from the New Independent States program funding to the Export-Import Bank to fund their programs in the New Independent States.

Amendment No. 50: Inserts Senate language allowing funds to remain available for two years.

Amendment No. 51: Inserts Senate language clarifying that funds are to remain available for two years.

TITLE V—GENERAL PROVISIONS

AVAILABILITY OF FUNDS

Amendment No. 52: Inserts Senate language which extends the period of availability for funds provided under the International Narcotics Control account.

The Administration is to provide the Committees on Appropriations a notification each time this authority is used.

NOTIFICATION REQUIREMENTS

Amendment No. 53: Deletes House language which strikes the American Schools and Hospitals Abroad account from the accounts listed under the notification provision as proposed by the Senate. No funding has been provided for this account for fiscal year 1994.

Amendment No. 54: Inserts Senate language adding Eastern Europe and the Baltic States and the New Independent States of the Former Soviet Union to the accounts from which the Administration may reprogram funds through the notification process.

LIMITATION ON AVAILABILITY OF FUNDS FOR INTERNATIONAL ORGANIZATIONS AND PROGRAMS

Amendment No. 55: Inserts language proposed by the Senate which adds a new subsection to the limitation of funds to International Organizations and programs. The new subsection allows an exception to the limitation with respect to the Palestine Liberation Organization for fiscal year 1994 if the President determines and notifies Congress that it is in the national interest to do so. The exception will cease to be in effect if the President, or the Congress by joint resolution, determines that the Palestine Liberation Organization has ceased to comply with the commitments made on September 9, 1993.

The conferees have included this language in support of those commitments and the declaration of principles agreement signed between Israel and the Palestine Liberation Organization on September 13, 1993.

SPECIAL NOTIFICATION REQUIREMENTS

Amendment No. 56: Inserts Senate language adding Colombia to the countries requiring special notification procedures.

Amendment No. 57: Inserts Senate language adding Nicaragua to the countries requiring special notification procedures.

Amendment No. 58: Inserts Senate language exempting notifications for development assistance for El Salvador and Nicaragua from the special notification requirements.

PROHIBITION AGAINST INDIRECT FUNDING TO CERTAIN COUNTRIES

Amendment No. 59: Deletes Senate language regarding Syrian emigration.

AUTHORIZATION REQUIREMENTS

Amendment No. 60: Restores House language citing titles I through V into the waiver of authorization.

Amendment No. 61: Inserts language waiving authorization requirement as proposed by the Senate. The House provided funds subject to authorization.

Amendment No. 62: Restores House language waiving authorization for programs under section 15 of the State Department Basic Authorities Act of 1956 for funds in this bill.

The Conferees have waived section 15 of the State Department Basic Authorities Act. Failure to waive this provision would have disastrous consequences for United States refugee assistance programs worldwide, effective October 1, 1993, including:

—precluding payment for salaries and administrative expenses for employees in the Bureau of Refugee programs;

—precluding the Bureau from providing essential funding for humanitarian aid for refugees, displaced persons and conflict victims;

—precluding funding to the UN High Commissioner for Refugees and other relief organizations' operations in the former Yugoslavia and elsewhere; and

—stopping the processing and admission of refugees to the United States.

Amendment No. 63: Inserts language authorizing an appropriation of $2,500,000,000 for the United States participation in the tenth replenishment of the International Development Association (IDA), the fifth replenishment of the Asian Development Fund and the replenishment of the permanent Global Environment Facility, subject to obtaining the necessary appropriations.

The conferees recognize the central role IDA plays in financing development in the poorest countries. However, over the years the conferees have concluded that the World Bank's policies and procedures fail to adequately protect the environment, or to ensure broad and timely public access to information about Bank activities and consultation with affected peoples. Also they do not provide adequate public recourse for violations of Bank loan and credit agreements, and Bank policies, procedures and guidelines. The conferees believe that these deficiencies have reduced the quality of World Bank and IDA lending, and eroded public support for these institutions.

While the conferees recognize that the World Bank has adopted new procedures in these areas and recently issued a resolution on an independent inspection panel, the reforms, as written, do not adequately address the conferees' concerns. Therefore, the conferees have authorized the equivalent of only two-thirds of the United States' three year contribution to IDA-ten. It is the conferees' strong belief that the World Bank needs to progress further in these areas, and that additional funding in support of IDA-ten will depend on the manner in which these new procedures are implemented and, where necessary, broadened. The conferees urge the Secretary of the Treasury to continue to vigorously pursue these goals.

OPPOSITION TO ASSISTANCE TO TERRORIST COUNTRIES BY INTERNATIONAL FINANCIAL INSTITUTIONS

Amendment No. 64: Inserts Senate language instructing the United States Executive Director of the International Fund for Agriculture Development to oppose any loan or use of funds to a country for which the Secretary has made a determination under section 6(j) of the Export Administration Act of 1979.

DEBT-FOR-DEVELOPMENT

Amendment No. 65: Deletes Senate language extending Debt-for-Development authority to subsequent acts.

LOCATION OF STOCKPILES

Amendment No. 66: Inserts Senate language allowing up to $72,000,000 to be made available for stockpiles in the Republic of Korea.

Amendment No. 67: Inserts language allowing up to $20,000,000 to be made available for stockpiles in Thailand. The Senate had provided for $20,000,000 to be made available.

RESCISSIONS

Amendment No. 68: Inserts language rescinding $203,000,000 from unexpended balances of Economic Support Funds made available for fiscal years 1987 through 1993. Also inserts Senate language rescinding $5,100,000 from unexpended development assistance funds appropriated for fiscal year 1993 and prior fiscal years.

The House had included a rescission of $185,000,000 for fiscal years 1993 and prior Economic Support Funds. The Senate had included a rescission of $250,000,000 for fiscal year 1993 and prior Economic Support Funds.

AUTHORITY TO ASSIST BOSNIA-HERCEGOVINA

Amendment No. 69: Inserts Senate language allowing use of up to $25,000,000 of United States commodities and services for the United Nations War Crimes Tribunal regarding genocide or other violations of international law in the former Yugoslavia.

Amendment No. 70: Deletes Senate language earmarking funds for the United Nations War Crimes Tribunal.

The conferees urge that every effort be made to obtain contributions from our allies and other U.N. member countries for this

vital effort. The conferees also strongly urge the Administration to provide a one-time voluntary contribution of $3,000,000 to help the war crimes tribunal for the former Yugoslavia to become operational. The conferees understand that the remainder of the funding for the tribunal will be met through assessed contributions from United Nations members.

SPECIAL AUTHORITIES

Amendment No. 71: Inserts Senate language allowing use of up to $50,000,000 in transfer authority of section 451 of the Foreign Assistance Act of 1961. The current limitation is $25,000,000.

Amendment No. 72: Deletes Senate language requiring that of the funds provided to Afghanistan and Lebanon not more than fifty percent come from development assistance funds.

ANTI-NARCOTICS ACTIVITIES

Amendment No. 73: Inserts language allowing for the continuation of Administration of Justice programs in Latin America and the Caribbean. It also allows up to $6,000,000 for police training in Panama of which not more than $3,000,000 may be used for procurement of non-lethal law enforcement equipment. It also provides for continuation of various Administration of Justice programs for Bolivia, Colombia and Peru.

ELIGIBILITY FOR ASSISTANCE

Amendment No. 74: Inserts Senate language allowing development assistance and development funds for Africa to be provided through non-governmental organizations notwithstanding aid restrictions in this or any other Act. The provision also allows aid restrictions to be waived for Titles I and II of Public Law 480. Use of the authority for Title I is subject to notification. Before using this authority the President must notify the appropriate committees of Congress. The authority of this section may not be used for countries that support international terrorism and countries that violate internationally recognized human rights. This authority shall not be construed to alter any existing statutory prohibitions against abortion or involuntary sterilization contained in this or any other Act.

EARMARKS

Amendment No. 75: Inserts Senate language on earmarks. The conferees desire to give maximum flexibility to the Administration to carry out its foreign policy reforms. That is why the conferees have reduced the number of earmarks. But, within that understanding, the conferees expect the Administration, to the greatest extent possible given changing circumstances, to adhere to the recommendations in the Committee Reports accompanying the Bill. To the extent the Administration is not able to follow the recommendations in the Committee Reports, the conferees expect the Administration to consult with the committees.

CEILINGS AND EARMARKS

Amendment No. 76: Inserts Senate language restricting the applicability of ceilings and earmarks.

EXCESS DEFENSE ARTICLES

Amendment No. 77: Inserts language allowing the provision of non-lethal excess defense articles to countries for which United States foreign assistance was justified for the fiscal year. The conferees agree that a separate justification for countries proposed to receive non-lethal excess defense articles is also required. The provision of non-lethal excess defense articles remains subject to notification as in current law.

TERMINATION

Amendment No. 78: Deletes Senate language allowing a special contractual authority for countries whose assistance has been terminated. The conferees agree that this issue should be addressed in future authorizing legislation.

REAL PROPERTY MANAGEMENT

Amendment No. 79: Inserts Senate language allowing transfer of funds remaining in AID's Acquisition of Property Revolving Fund to the Property Management Fund. The provision is amended to include a new section number 556.

UNITED STATES ASSISTANCE FOR THE TRANSITION TO A NON-RACIAL DEMOCRACY IN SOUTH AFRICA

Amendment No. 80: Deletes Senate language revising current law on South Africa. The Conferees agree not to include a provision on the transition to democracy in South Africa. It is the understanding of the conferees that the Congress will be considering comprehensive authorization legislation on this issue and therefore felt it more appropriate not to address this issue in this bill.

PROHIBITION AGAINST PAY TO FOREIGN ARMED SERVICE MEMBER

Amendment No. 81: Deletes Senate language prohibiting use of funds to pay pensions, annuities or retirement for any person serving in the armed forces of any country receiving foreign assistance. The conferees expect that foreign assistance will not to be used for this purpose.

PROHIBITION ON PUBLICITY OR PROPAGANDA

Amendment No. 82: Inserts Senate language prohibiting the use of funds for publicity or propaganda purposes within the United States. The provision is amended to include a new section number 557.

DISADVANTAGED ENTERPRISES

Amendment No. 83: Inserts Senate language on Agency for International Development policies for disadvantaged enterprises. The provision is amended to include a new section number 558.

HUMAN RIGHTS REPORT

Amendment No. 84: Deletes Senate language on the Human Rights Report. A central goal of United States foreign policy is the promotion of democracy and human rights. The conferees commend the State Department for its efforts to document human rights practices throughout the world in its annual Country Reports on Human Rights Practices. These reports have contributed to the protection of human rights.

The conferees request that in addition to the items currently discussed in the State Department report, the report should contain (1) a review of each country's commitment to children's rights and welfare; (2) a description of the extent to which indigenous people are able to participate in decisions affecting their lands, cultures and natural resources, and assess the extent of protection of their civil and political rights; and (3) an examination of discrimination toward people with disabilities.

The conferees are concerned that military expenditures by some developing countries which receive United States assistance may exceed legitimate security needs. Curbing the proliferation of unnecessary weapons in these countries should be a foreign policy goal. The conferees recommend and intend that a separate report, entitled "Annual Report on Military Expenditures," should be submitted (at the same time as the report required by section 116(d) of the Foreign Assistance Act of 1961) which contains for each country which receives U.S. assistance:

—an updated estimate of current military spending and a description of trends in spending in real terms;

—a description of the size and political role of the armed forces, including an assessment of the ability of civilian authorities to appoint and remove military officers;

—an assessment of the feasibility of reducing military spending;

—a description of efforts by the United States to encourage such reductions, including collaborative efforts with other donors and arms suppliers; and

—a description of the country's efforts to make such reductions, including its willingness to provide accurate military spending data to relevant international organizations and to the United Nations Register of Conventional Arms, and to participate in regional talks aimed at reducing military spending.

USE OF AMERICAN RESOURCES

Amendment No. 85: Inserts Senate language on the use of American resources. The provision is amended to include a new section number 559.

INTERNATIONAL FUND FOR IRELAND

Amendment No. 86: Deletes Senate language providing up to $19,600,000 from development assistance funds for the United States Contribution to the International Fund for Ireland, Funds for the United States Contribution have been provided under Amendment No. 33.

ASSISTANCE FOR THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION

Amendment No. 87: Inserts language which recommends allocations of all the funds provided to the New Independent States among seven categories of assistance and describes examples of the activities which may be funded from within each category. The amendment requires consultation with the Appropriations Committees of both Houses of Congress before the amount recommended for allocation to any of the seven categories may be initially exceeded. The language requires that the normal notification process as provided for in Section 515 of this Act apply to these funds, and that each such required notification shall include a statement as to which of the seven fund categories, or how much from mix of the seven categories, is proposed to be used to fund the project or program in the notification. The conferees intend that a further notification is required if the Administration desires to change the category or mix of categories from which a previously notified project or program would be funded.

The conferees urge the Administration to provide $4,000,000 for the purpose of identifying, retrieving, preserving, and analyzing existing scientific environmental data stored in Russia, including data on northern region contamination, key environmental parameters related to contaminant transport processes (ice, wind, water, and biota), North Pacific and Bering Sea fisheries, marine mammals and sea birds, and northern human ecology.

The conferees agree that not less than $300,000,000 should be provided to Ukraine from this or any other Act.

The conferees agree that none of the funds in this Act should be transferred to Russia unless the Government is making progress in private sector and market reforms, in negotiating repayment of commercial debt, and in providing for fair and equitable treatment of foreign private investment, or if the Government transfers assistance for the purpose of expropriating ownership or control of assets, investments, or ventures, unless the President certifies that to provide the funds is in the national interest.

The conferees urge that at least one-third of the funds made available by this Act for the New Independent States be available for States other than Russia.

The conferees strongly encourage the participation of qualified businesses in the United States with expertise in nuclear engineering and nuclear safety to participate in assisting any of the New Independent States in the establishment of designs and procedures to increase the safety of nuclear power plants operating in the NIS countries. While the conferees do not intend to control the manner in which the NIS countries provide for the implementation of programs for improved nuclear safety, they encourage where appropriate awarding of program funds to United States companies qualifying as small business—especially those which are located in areas affected by the decline in defense-related industries in the United States.

The conferees intend that the energy and environment category in the bill includes the use of funds for cooperative efforts involving Department of Energy cooperative agreement participants,

such as the National Institute for Environmental Renewal, to assist in the recycling, reuse, and reclamation of industrial sites, including education and training programs.

The conferees recommend $5,000,000 for exchanges involving postdoctoral scholars in the social sciences and humanities. Such a program should be administered through USIA's existing Regional Scholars Exchange, which currently offers such opportunities on a competitive basis to qualified non-profit organizations. This program provides an important component to a balanced program of exchanges at various age and professional levels that is provided by this legislation.

The conferees support the efforts of Project Orbis, a medical charity that teaches doctors in developing countries to perform sight-saving surgery to obtain funding for its work in Eastern Europe, the Baltics, and the republics of the former Soviet Union.

Amendment No. 88: Deletes Senate language earmarking $40,000,000 for a Russian Far East Enterprise Fund. The conferees urge that $40,000,000 be provided for enterprise fund activities in the Russian Far East.

Amendment No. 89: Inserts language conditioning assistance to New Independent States on their respecting each others' national sovereignty and territorial integrity. A Presidential national interest waiver and exemptions for humanitarian, refugee and disaster assistance are included. There is a reporting requirement on violations and on efforts to comply with the restriction.

Also, inserts language prohibiting the use of assistance for enhancement of the military capacity of any New Independent State with exemptions for demilitarization, defense conversion, non-proliferation programs, or programs conducted under section 560(a)(5) of this Act.

ANDEAN NARCOTICS INITIATIVE

Amendment No. 90: Inserts Senate language providing that no Economic Support Funds or Foreign Military Financing Program Funds may be made available for the Andean Narcotics Initiative until the Secretary of State consults with, and provides a new Andean counter-narcotics strategy (including budget estimates) to, the Committees on Appropriations. The provision is amended to include a new section number 561.

LIMITATION ON ASSISTANCE FOR NICARAGUA

Amendment No. 91: Inserts Senate language placing conditions on Economic Support Funds for Nicaragua. The conferees urge the Nicaraguan Government to move ahead rapidly with the investigation of the arms cache explosion of last May now being conducted by the Nicaraguan Government with the participation of a number of international investigative agencies, including the FBI. The conferees expect that the Government will prosecute vigorously any violation of Nicaraguan or international law. The provision is amended to include a new section number 562.

LIMITATIONS ON ASSISTANCE FOR HAITI

Amendment No. 92: Inserts Senate language restricting funds to Haiti under certain conditions.

AGRICULTURAL AID TO THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION

Amendment No. 93: Inserts language providing that out of the funds made available for the New Independent States up to $50,000,000, inclusive of transportation costs, for agricultural commodities is available for food and nutritional needs of children and women.

HUMANITARIAN ASSISTANCE FOR ARMENIA

Amendment No. 94: Inserts language providing that $18,000,000 should be available for Armenia from funds made available for Development Assistance, Economic Support Funds, and the New Independent States, for winterization needs including winter seeds and home heating oil. The conferees are strongly supportive of substantial levels of humanitarian assistance for the people of Armenia who for several years now have been suffering severely from both natural and man-made disasters. The conferees note that in past years Armenia has received more than $18,000,000 in assistance and believe that that level will be too low to meet Armenian needs in 1994. The conferees support amounts necessary above $18,000,000 to address the Armenian crisis.

HUMANITARIAN AND REFUGEE ASSISTANCE IN CROATIA, SLOVENIA, BOSNIA, AND KOSOVA

Amendment No. 95: Deletes language proposed by the Senate which would have earmarked not less than $35,000,000 in Migration and Refugee Assistance funds for Croatia, Slovenia and Bosnia, and $30,000,000 in humanitarian assistance for Bosnia, Croatia, and Kosova. The Senate amendment also included a subearmark of $10,000,000 for Kosova.

The conferees agree that funding in at least the amounts proposed by the Senate will be required in fiscal year 1994 and urge the Administration to take steps to meet the emergency needs in Bosnia, Croatia and Kosova. The conferees also agree that there is an immediate need to fund programs relative to the winter, and urge the Administration to take the lead in participating in the United Nations High Commissioner for Refugee's donor request for a winterization program.

PROHIBITION OF PAYMENTS TO UNITED NATIONS MEMBERS

Amendment No. 96: Inserts Senate language prohibiting the use of foreign assistance funds to pay assessments, arrearages or dues of any member of the United Nations. The provision is amended to include a new section number 566.

CONSULTING SERVICES

Amendment No. 97: Inserts Senate language prohibiting the use of funds for consulting contracts unless contracts are a matter

of public record and available for inspection with certain exceptions. The provision is amended to include a new section number 567.

PRIVATE VOLUNTARY ORGANIZATIONS—DOCUMENTATION

Amendment No. 98: Inserts Senate language prohibiting funds for private voluntary organizations which do not provide materials to the Agency for International Development for audit purposes in a timely manner or which are not registered with the Agency for International Development. The provision has been amended to include a new section number 568.

CHEMCIAL WEAPONS PROLIFERATION

Amendment No. 99: Inserts Senate language prohibiting the use of funds to finance procurement of chemicals or chemical agents that are used for chemical weapons production. The provision has been amended to include a new section number 569.

SPECIAL DEBT RELIEF FOR THE POOREST

Amendment No. 100: Inserts language granting authority for debt reduction actions only for poor countries eligible only for lending from the International Development Association. The authority permits, subject to appropriation, Export-Import Bank credits, military loans and guarantees, and housing program loans and guarantees to be reduced in the context of official multilateral debt relief agreements so long as the recipient country does not (1) have excessive military expenditures, (2) repeatedly provide support for acts of international terrorism, (3) fail to cooperate on international narcotics control matters, and does not, (4) engage in a consistent pattern of gross violations of internationally recognized human rights. Also, inserts a Sense of Congress statement that the President should consider requesting debt reduction funds corresponding to "Trinidad Terms".

GUARANTEES

Amendment No. 101: Inserts Senate Language addressing net guarantee costs for fiscal year 1994. The provision has been amended to include a new section number 571.

FOREIGN MILITARY FINANCING DIRECT COMMERCIAL SALES POLICY

Amendment No. 102: Inserts revised language relating to the policy on Foreign Military Financing of direct commercial sales. The new language requires the Secretary of Defense to not implement changes in the long-standing policy allowing the use of Foreign Military Financing funds for direct commercial sales unless and until all parties affected by any such change have been fully consulted and given opportunity for input into any such policy changes. The language also requires the Secretary of Defense to consult with the Committees on Appropriations, the House Foreign Affairs Committee, the Senate Foreign Relations Committee, the Armed Services Committees and the relevant agencies or departments of the Executive Branch.

The conferees are aware that changes may be needed in the policy concerning direct commercial sales, since the General Accounting Office has raised this as an area potentially subject to abuse. The GAO found that many of the purchasing problems for Foreign Military Sales exist under both the direct and Department of Defense procurement programs, however in a majority of cases direct sales are actually costing recipient countries more to procure directly with defense contractors than through the Department of Defense. The GAO also found that there are cases where direct purchasing is less expensive. The Department of Defense in developing a new policy needs to assure that the program addresses both of these situations.

The conferees are concerned that the Department's original intention to terminate direct commercial contracts effective January 1, 1994 did not afford sufficient time to restructure defense acquisition programs in a way that would not adversely impact ongoing programs. The conferees are particularly concerned that the Department proceeded to change the direct sales policy without consulting the Congress and those affected by the change. The conferees therefore welcome the Department's decision to delay the effective termination date. The language included in the bill is intended to assure that all parties are consulted prior to issuing a final determination.

RESTRICTION ON ASSISTANCE TO PERU

Amendment No. 103: Deletes Senate language restricting assistance to Peru. The conferees expect the Peruvian Government to provide fair, prompt and equitable payment to the widow and children of Master Sergeant Joseph Beard, Jr., United States Air Force, whose plane was shot down by Peruvian military forces on April 24, 1992. Fair and equitable payment should approximate the loss to the family due to Sergeant Beard's death. The parties have sought to resolve this matter but have not yet reached agreement. The conferees request the Secretary of State to use his influence with the Peruvian Government to resolve this tragic and complex matter in a manner he deems fair and equitable. The conferees urge that an appropriate amount of U.S. assistance to Peru be withheld until the Secretary determines that there has been a satisfactory resolution of this matter.

PROHIBITION ON ASSISTANCE TO FOREIGN GOVERNMENTS THAT EXPORT LETHAL MILITARY EQUIPMENT TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM

Amendment No. 104: Inserts language prohibiting funds in this Act to any country which provides lethal military equipment to a terrorist government as defined in section 40(d) of the Arms Export Control Act. The provision applies to contracts entered into after the date of enactment. The provisions of this section may be waived, if the President determines that furnishing assistance is in the national interest of the United States.

WITHHOLDING OF ASSISTANCE FOR PARKING FINES OWED BY FOREIGN COUNTRIES

Amendment No. 105: Inserts language withholding from obligation foreign assistance in the amount of 110 percent of fully adjudicated parking fines and penalties due the District of Columbia as of enactment of this Act on diplomats from countries receiving foreign assistance until the Secretary of State certifies that the parking tickets have been paid to the District of Columbia in full.

UKRAINE/RUSSIA STABILIZATION PARTNERSHIPS

Amendment No. 106: Inserts language which states that $35,000,000 should be provided for cooperative scientific and engineering programs between institutes in the New Independent States and the United States including the national laboratories and other qualified academic institutions. The program should be in support of programs which prevent and reduce proliferation of weapons of mass destruction.

USED OIL EQUIPMENT

Amendment No. 107: Deletes language proposed by the Senate which would have amended the Foreign Assistance Act concerning the purchase of used oil equipment. The conferees agree that current authority exists within the commodity import program to purchase used oil equipment, including arctic oil equipment, for the former Soviet Union and Eastern Europe countries, and encourage the Agency for International Development to use this authority when appropriate.

FISHING IN THE CENTRAL BERING SEA

Amendment No. 108: Deletes Senate language regarding fishing in the Central Boring Sea. The conferees understand that—

(1) the Central Bering Sea Fisheries Enforcement Act of 1992 (title III of Public Law 102–582) prohibits United States nationals and vessels from conducting fishing operations in the Central Bering Sea, in an area known as "the Doughnut", except when such fishing operations are in accordance with an international fishery agreement to which the United States and the Russian Federation are parties;

(2) the Central Bering Sea Fishery Enforcement Act also prohibits the entry into United States ports of any fishing vessel from a nation whose vessels or nationals conduct fishing operations in the Doughnut in the absence of such an international fishery agreement;

(3) the United States and the Russian Federation have participated in seven multilateral meetings among nations whose vessels or nationals fish in the Doughnut to discuss an international fishery agreement;

(4) a moratorium on fishing in the Doughnut for 1993 and 1994 was agreed to by the United States, the Russian Federation, Japan, Korea, Poland, and the People's Republic of China as part of these discussions, in order to facilitate negotiations on an international fishery agreement;

(5) at the Vancouver Summit on April 4, 1993, Presidents Clinton and Yeltsin committed to developing further bilateral cooperation on fishery matters in the Bering Sea;

(6) an international fishery agreement has not yet been reached despite the best efforts of the United States and the Russian Federation; and

(7) the cooperation of nations which receive aid through monies provided by this Act is needed in order for an international fishery agreement to be reached.

In light of the findings above, the Conferees agreed that the cooperation of nations whose vessels and nationals conduct fishing operations in the Central Bering Sea should be carefully considered in making appropriations for programs from which those nations will receive aid monies in fiscal year 1995.

KENYA

Amendment No. 109: Deletes Senate language restricting assistance to Kenya. The conferees commend Kenya for its constructive role in humanitarian relief operations in Somalia and for assistance to Somali refugees. The conferees also recognize steps taken by Kenya recently toward a more open and democratic political system. However, the conferees remain concerned about continuing human rights abuses, government corruption and economic mismanagement. Therefore, the conferees intend that in determining what levels and types of economic and development assistance to provide Kenya, the President should consider the extent of Kenya's progress towards increasing respect for human rights, freedom of expression, cooperation and dialogue with the democratic political opposition, as well as reducing corruption and improving management of the economy. The conferees intend that no military assistance is to be provided to Kenya unless the President first consults with Congress and determines that such assistance is in the national interest.

The conferees expect the long term framework for United States assistance policy towards Kenya to be addressed in foreign aid reform legislation.

PROHIBITION ON ASSISTANCE TO COUNTRIES EXPROPRIATING UNITED STATES PROPERTY

Amendment No. 110: Deletes language regarding the expropriation of property of United States persons.

RUSSIAN ASSISTANCE TO CUBA

Amendment No. 111: Inserts language withholding $380,000,000 of the funds for Russia unless the President certifies on April 1, 1994, that the government of Russia has not provided assistance to Cuba during the preceding 18 months. The President may waive this requirement, if he determines that it is in the national interest to do so.

RESTRICTION ON ASSISTANCE FOR RUSSIA

Amendment No. 112: Inserts Senate language restricting assistance to Russia regarding making substantial progress toward

the withdrawal of Russian armed forces from Latvia and Estonia. The provision has been amended to include a new section number 577.

POLICY WITH RESPECT TO RESTORATION OF DEMOCRACY IN HAITI

Amendment No. 113: Deletes Senate language regarding findings on Haiti.

STATEMENT OF POLICY ON THE UNITED NATIONS

Amendment No. 114: Deletes Senate language regarding the United Nations.

MIDDLE EAST PEACE FACILITATION ACT

Amendment No. 115: Inserts language allowing the President, until February 15, 1994 to waive section 307 of the Foreign Assistance Act with respect to the Palestine Liberation Organization, programs for the PLO, and programs for the benefit of entities associated with it, which accept the commitments made by the PLO on September 9, 1993. The President is to consult with the relevant Committees of Congress prior to exercising this waiver, and to determine that to do so is in the national interest. The waiver shall cease to be in effect if the President notifies Congress that the PLO has ceased to comply with the September 9, 1993 commitments, or if Congress, by joint resolution, makes a similar determination.

POLICY CONCERNING HUMAN RIGHTS AND DEMOCRACY IN VIETNAM

Amendment No. 116: Deletes Senate language regarding human rights and democracy in Vietnam.

SENSE OF THE SENATE REGARDING IMPORTATION OF PRODUCTS MADE WITH CHILD LABOR

Amendment No. 117: Deletes Senate language regarding importation of products made with child labor.

DEFINITION OF APPROPRIATE CONGRESSIONAL COMMITTEES

Amendment No. 118: Deletes Senate language defining appropriate congressional committees.

WORLD BANK GROUP

Amendment No. 119: Deletes Senate language regarding the World Bank Independent Inspection Panel.

RUSSIAN REFORM

Amendment No. 120: Inserts Sense of the Congress language in support of President Yeltsin's efforts to bring about economic and political reform in Russia.

TITLE VI—FISCAL YEAR 1993 SUPPLEMENTAL APPROPRIATIONS

FUNDS APPROPRIATED TO THE PRESIDENT ASSISTANCE FOR THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION

Amendment No. 121: Restores House language making available not to exceed $500,000,000 for a special privatization and restructuring fund.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1994 recommended by the Committee of Conference, with comparisons to the fiscal year 1993 amount, the 1994 budget estimates, and the House and Senate bills for 1994 follow:

New budget (obligational) authority, fiscal year 1993	$26,257,377,903
Budget estimates of new (obligational) authority, fiscal year 1994	14,425,993,066
House bill, fiscal year 1994	12,983,038,866
Senate bill, fiscal year 1994	12,526,854,047
Conference agreement, fiscal year 1994	12,982,665,866
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1993	−13,274,712,037
Budget estimates of new (obligational) authority, fiscal year 1994	−1,443,327,200
House bill, fiscal year 1994	−373,000
Senate bill, fiscal year 1994	+455,811,819

DAVID R. OBEY,
SIDNEY R. YATES,
CHARLES WILSON,
JOHN W. OLVER,
NANCY PELOSI,
ESTEBAN TORRES,
NITA M. LOWEY,
JOSÉ E. SERRANO,
WILLIAM H. NATCHER,
BOB LIVINGSTON,
JOHN PORTER,
JIM LIGHTFOOT,
SONNY CALLAHAN,
JOSEPH M. MCDADE,
Managers on the Part of the House.

MITCH MCCONNELL,
ALFONSE M. D'AMATO,
ARLEN SPECTER,
DON NICKLES,
CONNIE MACK,
PHIL GRAMM,
MARK O. HATFIELD,
PATRICK J. LEAHY,
DANIEL K. INOUYE,
DENNIS DECONCINI,
FRANK R. LAUTENBERG,
TOM HARKIN,
BARBARA A. MIKULSKI,
DIANNE FEINSTEIN,
ROBERT C. BYRD,
Managers on the Part of the Senate.

○

103D CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT 103–268

UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1993

SEPTEMBER 29, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 3167]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3167) to extend the emergency unemployment compensation program, to establish a system of worker profiling, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

In section 2(c) of the bill, strike "May 21, 1994" and insert "April 30, 1994".

Insert before the period at the end of section 3(b) of the bill the following "; except that such repeal shall not apply in determining eligibility for emergency unemployment compensation from an account established before October 2, 1993".

In paragraph (2) of section 7(b) of the bill, strike "1997" and insert "1996".

I. INTRODUCTION

A. PURPOSE AND SCOPE OF THE BILL

The Committee on Ways and Means completed action on H.R. 3167 on September 29, 1993. The bill, which would extend the Emergency Unemployment Compensation program through February 5, 1994, and phase it out over a three month period ending April 30, 1994, is intended to address a continuing, high rate of long-term unemployment following the recent recession by provid-

69–006

ing income support to individuals who exhaust regular State unemployment compensation.

B. BACKGROUND AND NEED FOR LEGISLATION

The economy continues to improve following the 1990–1991 recession, but at a slow pace relative to prior recessions. Of particular concern is the problem of long-term unemployment. As Secretary of Labor Reich emphasized in his testimony before the Subcommittee on Human Resources on September 22, 1993, "the bad news is that in this recovery * * * to a far greater extent than previous recoveries, we are experiencing structural unemployment. * * * Many people who have lost their jobs are spending months, and months and months, sometimes a year or more seeking the next job."

The good news is that the jobless recovery has ended, Secretary Reich told the Subcommittee. Over a million new jobs were created in the economy over the past seven months, almost the number created over the past four years.

In addition, the unemployment rate has eased downward in recent months to 6.7 percent. However, this good news is tempered by the fact that this remains close to the 6.9 percent rate when the EUC program was established in November 1991 and it now is two and one-half years since the trough of the recession.

While the unemployment rate has improved somewhat and initial claims for unemployment compensation have fallen since the end of the recession, long-term unemployment—at which the EUC program is targeted—continues as an especially troubling characteristic of this recovery. According to the Labor Secretary, "if you are unemployed, the trend is that you are going to be unemployed a longer and longer period of time." He cites as reasons for this phenomenon the number of corporations who are making permanent reductions in their labor force, military downsizing, and an unprecedented technological change making both industries—and occupations—obsolete. Global competition also is a factor causing some workers to lose jobs permanently, but also creating new opportunities for other workers.

Unemployment data provide evidence of high structural unemployment:

> In July there were 1.75 million workers unemployed at least 27 weeks, compared to 1.37 million when the EUC program was initiated in November 1991. Prior to the recession, there were 630 thousand long-term unemployed.
>
> The number of unemployed workers who exhaust regular State unemployment benefits without finding a job has not fallen as it typically has at this point following a recession. The number is higher today than when the EUC program first was enacted in November 1991 (271 thousand compared to 260 thousand), and significantly higher than prior to the recession (271 thousand compared to 184 thousand).
>
> The exhaustion rate (the percent of individuals receiving regular benefits who exhaust the benefits) also typically peaks in the few months following the end of a recession. Following this latest recession, however, it continued to climb for nearly two years. After falling slightly in the latter part of 1992 and early

part of 1993, it recently rose again in July to 38.4 percent. This is a significantly higher rate than historically is associated with a 6.8 percent unemployment rate. The exhaustion rate is a high employment period is usually 25 to 30 percent; prior to the recession the rate was 28 percent.

The percent of unemployed workers who are not expecting recall and have been laid off permanently is at an historically high level. Today, only one quarter of the unemployed is on temporary layoff.

As noted above, over 250,000 workers continue to exhaust their regular unemployment benefits each month. Without an extension of EUC, only a tiny fraction of these workers will be eligible for additional unemployment compensation through the permanent Extended Benefits (EB) program (see below). Thus, extending the Emergency Unemployment Compensation program four months will provide significant financial relief to approximately one million workers and their families.

Studies demonstrate that this aid is critical to preventing many of these families from falling into poverty. For example, a 1986 study by the Urban Institute concluded that: "* * * the long-term unemployed experience very high poverty rates and that unemployment insurance benefits have a substantial poverty-reducing impact." In addition, a more recent Congressional Budget Office study found that the poverty rate doubled to over 30 percent among individuals who exhausted their regular State benefits and remained jobless in the ensuing three months.

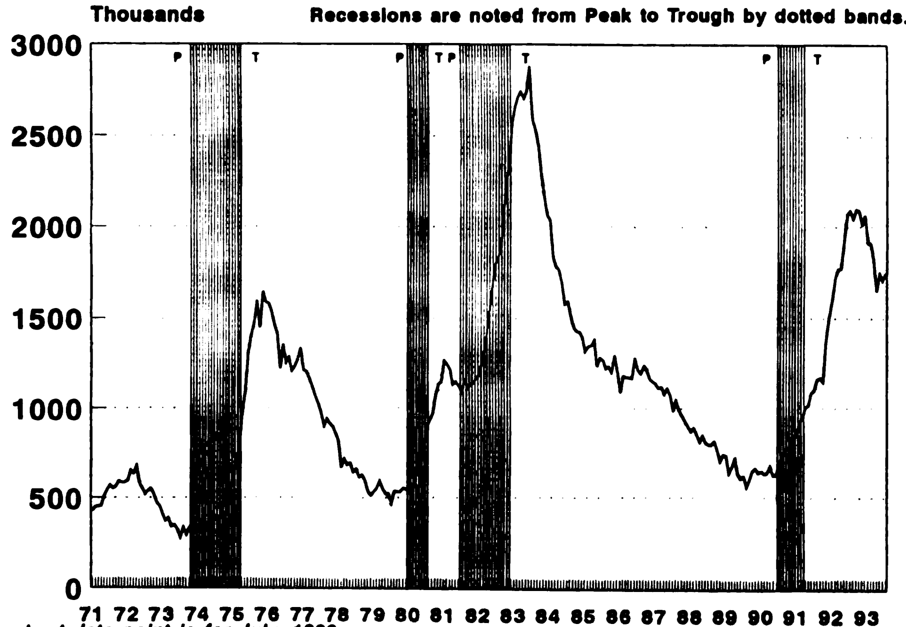
Some ask why an extension of the temporary EUC program is needed, when the permanent Extended Benefits (EB) program recently was reformed to allow States to adopt an optional trigger mechanism. The answers are straightforward: only eight States are projected to meet the optional trigger requirements that would make them eligible to provide 13 or 20 weeks of benefits in October, and of these only two have adopted the optional trigger in State law.

One of the optional trigger requirements—that the total unemployment rate in the State must be at least ten percent higher than it was during the same 3-month period of either of the last two years—currently precludes 18 States, while the unemployment rate has not increased substantially over the past two years, the unemployment rate has remained high due to structural unemployment.

Even relaxing the trigger requirements would only go so far toward ensuring income support to workers exhausting regular State benefits. Only 7 States have adopted the optional trigger mechanism in State law, in part because many State unemployment trust funds have been depleted because of the recession and an unwillingness to raise taxes. Many State officials believe that they cannot afford the 50 percent State cost of the EB program. In fact, the Governor of California vetoed a bill that adopted the optional trigger, citing a lack of funds and general economic conditions.

Persons Unemployed
27 Weeks and Over
SEASONALLY ADJUSTED

Recessions are noted from Peak to Trough by dotted bands.

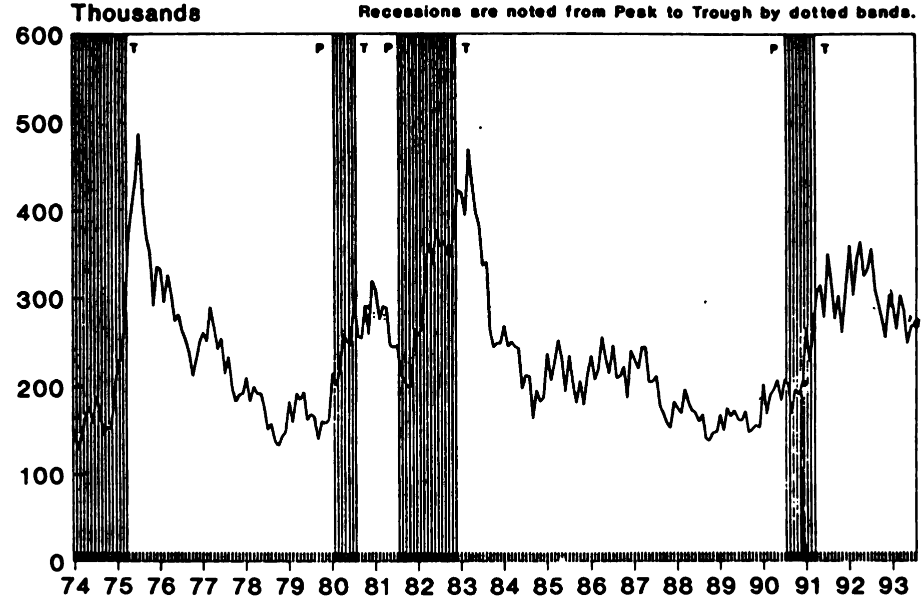


Last data point is for July, 1993

August 6, 1993

SOURCE: USDOL | BLS

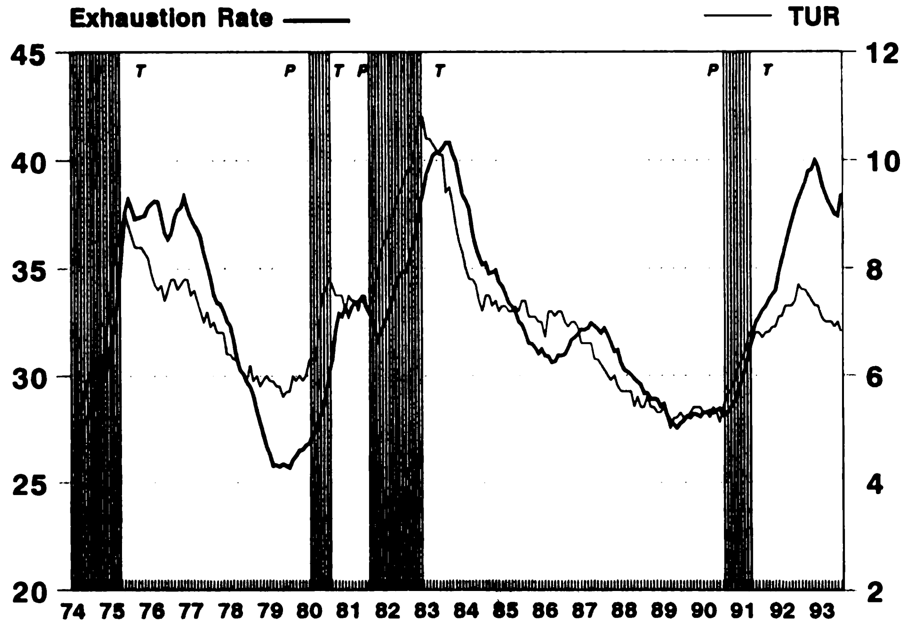
Exhaustions
Regular State Program



Last data point is for July, 1993
August 30, 1993

SOURCE: USDOL \ ETA \ UIS
Division of Actuarial Services

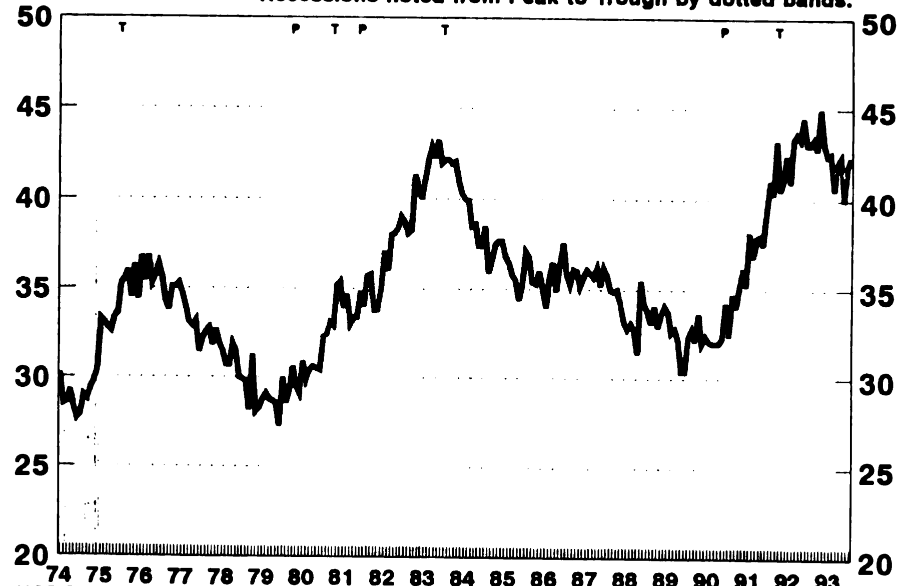
Exhaustion Rates vs.
Total Unemployment Rates



Last data point is for July 1993
Recessions are noted from Peak to Trough by dotted bands.

SOURCE: USDOL / ETA / UIS
Division of Actuarial Services

Job Losers Not on Layoff
as Percent of Total Unemployment



Source: USDOL\BLS
Prepared by: USDOL\ETA\UIS

Seasonally Adjusted Data through July 1993

MEASURES OF UNEMPLOYMENT

Month ending	Total unemployment rate	No. unemployed 27 weeks or more	Persons receiving EUC	Regular State UI		
				Initial claims	Exhaustions	Exhaustion rate percent
January 1990	5.3	647,000	....	2,501,830	202,851	28.2
February 1990	5.3	634,000	....	1,537,572	168,809	28.2
March 1990	5.2	639,000	....	1,417,065	190,920	28.3
April 1990	5.4	677,000	....	1,361,509	196,565	28.2
May 1990	5.3	624,000	....	1,320,089	207,856	28.3
June 1990	5.1	627,000	....	1,333,281	184,240	28.4
July 1990	5.4	685,000	....	1,763,318	208,177	28.1
August 1990	5.6	731,000	....	1,450,766	202,425	28.2
September 1990	5.7	763,000	....	1,221,237	168,733	28.4
October 1990	5.8	704,000	....	1,754,654	197,743	28.6
November 1990	6.0	828,000	....	2,039,092	190,284	28.8
December 1990	6.2	822,000	....	2,482,828	204,652	29.4
January 1991	6.3	856,000	....	3,065,068	266,339	29.9
February 1991	6.5	915,000	....	2,065,181	228,382	30.5
March 1991	6.8	947,000	....	1,951,876	261,274	31.1
April 1991	6.6	1,007,000	....	1,867,705	306,087	32.0
May 1991	6.8	1,016,000	....	1,641,621	314,353	32.5
June 1991	6.8	1,085,000	....	1,496,634	277,356	32.7
July 1991	6.7	1,102,000	....	2,027,592	349,743	33.1
August 1991	6.8	1,161,000	....	1,518,933	316,484	33.2
September 1991	6.8	1,168,000	....	1,358,799	275,684	33.5
October 1991	6.9	1,147,000	....	1,735,110	303,009	33.8
November 1991	6.9	1,374,000	50,297	1,890,764	260,156	34.0
December 1991	7.1	1,508,000	1,050,637	2,602,576	314,152	34.8
January 1992	7.1	1,594,000	1,463,042	2,923,317	359,458	35.4
February 1992	7.3	1,720,000	1,416,257	1,887,269	302,770	36.0
March 1992	7.3	1,768,000	1,698,927	1,774,610	342,905	36.7
April 1992	7.3	1,769,000	1,718,565	1,655,775	363,715	37.2
May 1992	7.4	1,944,000	1,586,562	1,413,560	324,206	37.7
June 1992	7.7	2,069,000	1,597,249	1,651,595	333,305	38.2
July 1992	7.6	2,088,000	1,611,880	2,039,867	355,665	38.6
August 1992	7.6	2,045,000	1,332,021	1,443,622	310,524	38.9
September 1992	7.5	2,095,000	1,471,857	1,425,441	293,656	39.5
October 1992	7.4	2,089,000	1,440,893	1,488,534	276,266	39.5
November 1992	7.3	2,008,000	1,392,246	1,534,753	254,760	40.0
December 1992	7.3	2,065,000	1,601,324	2,040,951	303,900	39.7
January 1993	7.1	1,910,000	1,452,000	2,070,631	291,258	39.0
February 1993	7.0	1,907,000	1,321,620	1,429,434	263,657	38.5
March 1993	7.0	1,814,000	1,582,426	1,526,326	303,381	38.1
April 1993	7.0	1,650,000	1,399,271	1,381,709	287,564	38.1
May 1993	6.9	1,743,000	1,244,159	1,165,996	248,207	37.5
June 1993	7.0	1,703,000	1,417,426	1,377,739	267,856	37.4
July 1993	6.8	1,747,000	1,383,430	1,591,746	271,111	38.4
August 1993	6.7	1,739,000	NA	NA	NA	NA

C. LEGISLATIVE HISTORY OF THE EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM

The current Emergency Unemployment Compensation (EUC) program is the result of a series of bills passed by Congress dating back to the summer of 1991.

First, H.R. 3201 (Public Law 102–107), the Emergency Unemployment Compensation Act of 1991, was signed by President Bush on August 17, 1991. The law did not take effect, however, because the President did not sign a separate declaration of an emergency. The Act would have provided 20, 13, 7, or 4 weeks of benefits, depending on State total unemployment rates. The program would have been effective from September 1, 1991 through July 4, 1992.

Second, S. 1722, the Emergency Unemployment Compensation Act of 1991, was vetoed by President Bush on October 11, 1991. It declared an emergency if the President signed the bill. It would have provided 20, 13, or 7 weeks of benefits, depending on State total unemployment rates. The program would have been effective from October 6, 1991 through July 4, 1992.

Third, H.R. 3575 (Public Law 102–164), the Emergency Unemployment Compensation Act of 1991, was signed by President Bush on November 15, 1991. It provided 20, 13, or 6 weeks of benefits, depending on State total and adjusted insured unemployment rates. The program was authorized from November 17, 1991 through July 4, 1992. Funding came from: (1) a permanent extension of the Internal Revenue Service authority to collect nontax debts owed to Federal agencies; (2) a one-year extension of the 0.2 percentage point Federal Unemployment Tax Act (FUTA) surtax through 1996; (3) an increase in the amount of estimated income taxes that must be deposited each year by high-income taxpayers; and (4) tighter collection provisions for Guarantoed Student Loans, including Federal garnishment of wages.

Fourth, H.R. 1724 (Public Law 102–182) was signed by President Bush on December 4, 1991. It modified the benefits provided in H.R. 3575 by eliminating the 6-week benefit tier and providing 20 or 13 weeks of benefits as in H.R. 3575. The amendment was financed by cutting the program back from through July 4, 1992 to June 13, 1992 and residual pay-as-you-go offsets in H.R. 3575.

Fifth, H.R. 4095 (Public Law 102–244) was signed by President Bush on February 7, 1992. It extended an additional 13 weeks of benefits for all EUC claimants so that a maximum of 33 or 26 weeks of benefits was available through June 13, 1992. Also, it provided 20 or 13 weeks of benefits through July 3, 1992. It was funded by $2.2 billion in carryover pay-as-you-go financing from earlier entitlement legislation and an increase in corporate estimated tax deposits.

Sixth, H.R. 5260 (Public Law 102–318), the Unemployment Compensation Amendments of 1992, was signed by President Bush on July 3, 1992. It extended the EUC program to March 6, 1993, and provided 26 or 20 weeks of benefits to new claimants of EUC beginning after June 13, 1992. Benefits will be phased down to 15 or 10 and 13 or 7 weeks depending on whether the national total unemployment rate falls below 7.0 or 6.8 percent, respectively. Changes in the Extended Benefits program were also enacted, including an optional total unemployment rate trigger and a suspension of special eligibility requirements from March 7, 1993 through December 31, 1994. It was funded by extending the phaseout of personal exemptions by one year (1996), increasing corporate estimated taxes, provisions dealing with the rollover of pension distributions, and carryover pay-as-you-go financing from earlier entitlement legislation.

Seventh, H.R. 920 (Public Law 103–6), the Emergency Unemployment Compensation Amendments of 1993, was signed by President Clinton on March 4, 1993. It extended the Emergency Unemployment Compensation Act of 1991 through October 2, 1993. Also, it eliminated the cost-of-living increase relating to pay for Members of Congress that was scheduled for January 1994. It also des-

ignated the direct spending as an emergency. The President designated the extension of EUC through October 2, 1993 as an emergency on March 2, 1993.

II. Explanation of Provisions

A. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM

Present law

The Federal Emergency Unemployment Compensation (EUC) program provides additional weeks of benefits for most workers who exhaust their regular State benefits depending on unemployment in their States. Currently, States with "adjusted insured unemployment rates" (AIURs) of at least 5 percent or total unemployment rates (TURs on a six month moving average basis) of at least 9 percent are eligible to pay 15 weeks of benefits. All other States are eligible to pay 10 weeks of benefits. If the national unemployment rate remains below 6.8 percent this month, the number of weeks of benefits available will fall to 7 or 13 weeks, depending on the unemployment rate in each State.

The authorization for new claims of EUC benefits expires on October 2, 1993. Claimants entitled to EUC benefits before this date may continue to claim their remaining entitlement until January 15, 1994.

Explanation of provision

The bill would extend the expiration date for the authorization of new claims under the EUC program from October 2, 1993 to February 5, 1994.

Individuals qualifying for EUC after October 2, 1993 would be eligible for up to 7 to 13 weeks of benefits, depending on the unemployment rate in the individual's State (as under current law, States with AIURs of at least 5 percent of TURs of at least 9 percent would be eligible to pay benefits for the longer period).

The bill would provide for the phase-out of the EUC program by allowing individuals who qualify on or before the new expiration date of February 5, 1994 to collect the balance of their benefits, except that no benefits could be paid after April 30, 1994.

Effective date

Weeks of unemployment beginning after October 2, 1993.

B. MODIFICATION TO ELIGIBILITY REQUIREMENTS FOR EMERGENCY UNEMPLOYMENT COMPENSATION

Present law

EUC claimants who are "exhaustees," either because the benefit year has expired or because they have drawn all of the benefits under the State program to which they are entitled during the 52-week benefit year that begins when a claim is filed in all States except New Hampshire, may choose under current law to receive either emergency unemployment compensation under the Federal program or regular State unemployment compensation that is available in a second benefit year.

Explanation of provision

The provision would repeal a section of current law which enabled EUC claimants who are exhaustees to choose EUC in lieu of regular State benefits at the beginning of a new benefit year.

Effective date

The amendment would apply to weeks of unemployment beginning after the date of enactment, except that the repeal would not apply in determining eligibility for EUC from an account established before October 2, 1993.

C. WORKER PROFILING

Present law

The Emergency Unemployment Compensation Amendments of 1993, Public Law 103–6, generally authorized the Secretary of Labor to establish a program for encouraging the adoption and implementation of a system of profiling all new claimants for regular unemployment compensation to determine which claimants may be likely to exhaust benefits and may need reemployment services. The Secretary was required to provide technical assistance and advice to the States in developing model profiling systems. Such systems must include the effective use of automated date processing. The Secretary must provide each State, from funds available for this purpose, such funds as may be necessary.

By October 1995, the Secretary of Labor must report to Congress on the operation and effectiveness of the profiling systems adopted by the States and his recommendation for continuing the system and any appropriate legislation.

Explanation of provision

The provision would amend the Social Security Act to require a State agency administering the unemployment insurance program to establish and use a system of profiling all new claimants for regular benefits that: (1) identifies which claimants are likely to exhaust benefits and will need job search assistance; (2) refers claimants identified to job search assistance; (3) collects follow-up information relating to the services received by such claimants and the post-program employment of such claimants, and uses such information in identifying future claimants; and (4) meets other requirements the Secretary of Labor determines appropriate. Whenever the Secretary determines that a State has failed to comply with these requirements, he would be required to notify the State that further payments will not be made until the State complies.

The provision also would require, as a condition of eligibility for regular compensation, that any claimant who has been referred to job search assistance under the profiling system participate in such service or similar services unless the State agency determines: (1) the claimant has completed such services; or (2) there is a justifiable cause for such claimant's failure to participate in such services.

The Secretary would be required to provide technical assistance and advice to the States in implementing the profiling system, which must include developing and identifying model profiling sys-

tems. Not later then three years after the date of enactment, the Secretary would be required to report to Congress on the operation and effectiveness of the profiling system and the participation requirement. The report must include recommendations as the Secretary determines are appropriate.

Finally, section 4 of Public Law 103–6, Profiling of New Claimant, would be repealed.

Effective date

The profiling system and participation requirements would be effective one year after the date of enactment. The provisions dealing with technical assistance, the report to Congress, and the repeal of section 4 of Public Law 103–6, Profiling of New Claimants, would be effective on date of enactment.

D. TECHNICAL AMENDMENT TO UNEMPLOYMENT TRUST FUND

Present law

The Emergency Unemployment Compensation Act, as amended, inadvertently included language amending section 905(b)(1) of the Social Security Act. The language assumes enactment of a provision that had been proposed but never enacted.

Explanation of provision

The provision would strike the language that was inadvertently included in the Emergency Unemployment Compensation Act.

Effective date

Date of enactment.

E. EXTENSION OF REPORTING DATE FOR ADVISORY COUNCIL

Present law

The Emergency Unemployment Compensation Act of 1991 authorized a quadrennial advisory council on unemployment compensation to examine the purpose, goals, and functioning of the unemployment compensation system, and to make recommendations for improvement. The first Council's report is due by February 1, 1994.

Explanation of provision

The provision would delay the Council's report for one year to February 1, 1995, and subsequent Councils' report would be due the third year of their activity.

Effective date

Date of enactment.

F. ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO ALIENS UNDER THE SUPPLEMENTAL SECURITY INCOME (SSI) PROGRAM

Present law

The SSI program provides benefits to aged, blind, and disabled persons whose income and resources fall below specified amounts. To be eligible for SSI, an individual must be either a citizen of the

United States or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

Since October 1980, the income and resources of a lawfully admitted alien's sponsor have been considered in determining eligibility and payment amount. A sponsor is an individual who has signed an affidavit of support as a condition of the alien's admission for permanent residence in the United States. Consideration of a sponsor's income and resources is called "sponsor-to-alien deeming." This type of deeming can apply within a 3-year period from the time the alien is admitted to the United States for permanent residence or granted permanent residence status by the Immigration and Naturalization Service. After the three-year period expires, the alien may apply for SSI without regard to the sponsor's income and resources.

Explanation of provision

The provision would increase the sponsor-to-alien deeming period from 3 years to 5 years, effective from January 1, 1994 to October 1, 1996.

Effective date

January 1, 1994 through October 1, 1996.

III. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE

In compliance with clause 7(a) of rule XIII of the rules of the House of Representatives, the following statement is made: the Committee agrees with the estimate prepared by the Congressional Budget Office which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that the letter from the Congressional Budget Office indicates that there is a change in budget authority and that there are no new or increased tax expenditures as a result of the bill.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 29, 1993.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional budget Office has prepared the attached cost estimate of H.R. 3167, The Unemployment

Compensation Amendments of 1993, as ordered reported by the Committee on Ways and Means on September 29, 1993.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Cory Oltman and Patrick Purcell.

Sincerely,

ROBERT D. REISCHAUER, *Director*.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 3167 as ordered reported by House Ways and Means Committee on September 29, 1993:

[By fiscal years, outlays in millions of dollars]

	1994	1995	1996	1997	1998	5-year
Direct spending:						
Emergency unemployment compensation [1]	1,070	....	....	....	....	1,070
Worker profiling and job search assistance-benefit changes	0	−17	−105	−270	−372	−764
SSI alien sponsors:						
SSI Benefits	−20	−80	−110	....	....	−210
Medicaid benefits	−10	−40	−70	....	....	−120
Total direct spending [2]	1,040	−137	−285	−270	−372	−24
Amounts subject to appropriations:						
Unemployment administrative expenses	30	....	....	....	....	30
Worker profiling and job search assistance-administration expenses	0	34	169	344	350	897
Advisory council	1	(3)	....	....	....	....
Total amounts subject to appropriations	31	34	169	344	350	928

[1] This bill would extend the Federal Emergency Unemployment Compensation Program through Feb. 5, 1994. This program would provide either 13 or 7 weeks of benefits depending on a State's adjusted insured unemployment rate or total unemployment rate.
[2] The total direct spending effects would equal the pay-as-you-go effects in fiscal year 1994 through 1998.
[3] Less than $500,000

Note: There are no estimated effects on State and local governments.

IV. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made; the bill, H.R. 3167 was ordered favorably reported to the House of Representatives on September 29, 1993, by voice vote.

B. OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the need for this legislation was the focus of a hearing of the Subcommittee on Human Resources held on September 22, 1993.

C. OVERSIGHT BY COMMITTEE ON GOVERNMENT OPERATIONS

In compliance with clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no oversight findings and recommendations have been submitted to this Committee by the Committee on government Operations with respect to the provisions contained in this bill.

D. INFLATION IMPACT

In compliance with clause 2(l)(4)(B) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the amendments are not expected to have any inflationary impact on the economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1991

TITLE I—EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM

SEC. 101. FEDERAL-STATE AGREEMENTS.

(a) * * *

* * * * * * *

(e) ELECTION BY STATES; WEEKS OF BENEFITS DURING PHASE-OUT.—

(1) ELECTION BY STATES.—Notwithstanding any other provision of Federal law (and if State law permits), the Governor of a State is authorized to and may elect to trigger off an extended compensation period in order to provide payment of emergency unemployment compensation to individuals who have exhausted their rights to regular compensation under State law. The preceding sentence shall not be applicable with respect to any extended compensation period which begins after [October 2, 1993] *February 5, 1994,* nor shall the special rule in section 203(b)(1)(B) of the Federal-State Extended Unemployment Compensation Act of 1970 (or the similar provision in any State law) operate to preclude the beginning of an extended compensation period after [October 2, 1993] *February 5, 1994,* because of the ending of an earlier extended compensation period under the preceding sentence.

(2) WEEKS OF BENEFITS DURING PHASE-OUT.—Notwithstanding subsection (b)(1)(B) or any other provision of law, whenever an extended compensation period is beginning in a State [(and is not triggered off under paragraph (1))] *after February 5, 1994,* an individual, who is entitled to extended compensation in the new extended compensation period (whether or not the individual applies therefor) and also has remaining entitlement to emergency unemployment compensation under this Act, shall be entitled to compensation under the program in which the individual's monetary entitlement (as of the beginning of the first week of the extended compensation period) is the greater.

[(f) CERTAIN RIGHTS TO REGULAR COMPENSATION DISREGARDED.—If an individual exhausted his rights to regular com-

pensation for any benefit year, such individual's eligibility to receive emergency unemployment compensation under this Act in respect to such benefit year shall be determined without regard to any rights to regular compensation for a subsequent benefit year if such individual does not file a claim for regular compensation for such subsequent benefit year.]

SEC. 102. EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) * * *

(b) AMOUNT IN ACCOUNT.—

(1) * * *

(2) APPLICABLE LIMIT.—For purposes of this section—

(A) IN GENERAL.—Except as otherwise provided in this paragraph—

(i) * * *

* * * * * * *

(vi) REDUCTION OF WEEKS AFTER OCTOBER 2, 1993.—In the case of weeks beginning after October 2, 1993—

(I) clause (i) of this subparagraph shall be applied by substituting "13" for "33" and by substituting "7" for "26",

(II) clauses (ii), (iii), (iv), and (v) of this subparagraph shall not apply, and

(III) subparagraph A of paragraph (1) shall be applied by substituting "50 percent" for "130 percent".

[(vi)] *(vii)* LIMITATIONS ON REDUCTIONS.—In the case of an individual who is receiving emergency unemployment compensation for a week preceding the first week for which a reduction applies under clause (ii), (iii), [or (iv)] *(iv), or (vi)* of this subparagraph, such reduction shall not apply to such individual for the first week of such reduction or any week thereafter for which the individual meets the eligibility requirements of this Act.

(B) APPLICABLE LIMIT NOT REDUCED.—Except as provided in clauses (ii), (iii), [and (iv)] *(iv) and (vi)* of subparagraph (A), an individual's applicable limit for any week shall in no event be less than the highest applicable limit in effect for any prior week for which emergency unemployment compensation was payable to the individual from the account involved.

* * * * * * *

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no emergency unemployment compensation shall be payable to any individual under this Act for any week—

(A) * * *

(B) beginning after [October 2, 1993] *February 5, 1994.*

(2) TRANSITION.—In the case of an individual who is receiving emergency unemployment compensation for a week prior to or including [October 2, 1993] *February 5, 1994*, emergency unemployment compensation shall continue to be payable to such individual for any week thereafter for which the individ-

ual meets the eligibility requirements of this Act. No compensation shall be payable by reason of the preceding sentence for any week beginning after [January 15, 1994] *April 30, 1994*.

*   *   *   *   *   *   *

SEC. 106. DEFINITIONS.

(a) IN GENERAL.—For purposes of this Act:

(1) * * *

(2) PERIOD OF ELIGIBILITY.—An individual's period of eligibility consists of any week which begins on or after November 17, 1991, and which (except as provide din section 102(f)(2)) begins before [October 1, 1993] *February 5, 1994*; except that an individual shall not have any period of eligibility unless his benefit year ends on or after November 16, 1991.

*   *   *   *   *   *   *

SOCIAL SECURITY ACT

*   *   *   *   *   *   *

TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

*   *   *   *   *   *   *

PROVISIONS OF STATE LAWS

SEC. 303 (a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for—

(1) * * *

*   *   *   *   *   *   *

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 302 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law[.]*; and*

(10) A requirement that, as a condition of eligibility for regular compensation for any week, any claimant who has been referred to reemployment services pursuant to the profiling system under subsection (j)(1)(B) participate in such services or in similar services unless the State agency charged with the administration of the State law determines—

(A) such claimant has completed such services; or

(B) there is justifiable cause for such claimant's failure to participate in such services.

*   *   *   *   *   *   *

(j)(1) The State agency charged with the administration of the State law shall establish and utilize a system of profiling all new claimants for regular compensation that—

(A) identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;

(B) refers claimants identified pursuant to subparagraph (A) to reemployment services, such as job search assistance services, available under any State or Federal law;

(C) collects follow-up information relating to the services received by such claimants and the employment outcomes for such claimants subsequent to receiving such services and utilizes such information in making identifications pursuant to subparagraph (A); and

(D) meets such other requirements as the Secretary of Labor determines are appropriate.

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the secretary of the Treasury with respect to such State.

JUDICIAL REVIEW

SEC. 304. (a) Whenever the Secretary of Labor—

(1) finds that a State law does not include any provision specified in section 303(a), or

(2) makes a finding with respect to a State under subsection (b), (c), (d), (e), (h), [or (i)] *(i), or (j)* of section 303,

such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28, United States Code.

* * * * * * *

TITLE IX—MISCELLANEOUS PROVISIONS RELATING TO EMPLOYMENT SECURITY

* * * * * * *

EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT

ESTABLISHMENT OF ACCOUNT

SEC. 905. (a) * * *

TRANSFERS TO ACCOUNT

[(b)(1) Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month), from the employment security administration account to the extended unemployment compensation account established by subsection (a), an amount determined by him to be equal to the sum of—

[(A) 100 percent of the transfers to the employment security administration account pursuant to section 901(b)(2) during such month on account of liabilities referred to in section 901(b)(1)(B), plus

[(B) 20 percent of the excess of the transfers to such account pursuant to section 901(b)(2) during such month on account of amounts referred to in section 901(b)(1)(A) over the payments during such month from the employment security administration account pursuant to section 901 (b)(3) and (d).

[If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (B), proper adjustments shall be made in the amounts subsequently transferred.]

(b)(1) Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month) from the employment security administration account to the extended unemployment compensation account established by subsection (a), an amount (determined by such Secretary) equal to 20 percent of the amount by which—

(A) the transfers to the employment security administration account pursuant to section 901(b)(2) during such month, exceed

(B) the payments during such month from the employment security administration account pursuant to section 901(b)(3) and (d).

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.

* * * * * * *

ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION

SEC. 908. (a) * * *

* * * * * * *

(f) REPORT.—

(1) IN GENERAL.—Not later than February 1 of the [2d] *third* year following the year in which any Council is required to be established under subsection (a), the Council shall submit to the President and the Congress a report setting forth the findings and recommendations of the Council as a result of its evaluation of the unemployment compensation program under this section.

(2) REPORT OF FIRST COUNCIL.—The Council shall include in its report required to be submitted by February 1, [1994] *1995*, the Council's findings and recommendations with respect to determining eligibility for extended unemployment benefits

on the basis of unemployment statistics for regions, States, or subdivisions of States.

* * * * * * *

ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO ALIENS

SEC. 1621. (a) For purposes of determining eligibility for and the amount of benefits under this title for an individual who is an alien, the income and resources of any person who (as a sponsor of such individual's entry into the United States) executed an affidavit of support or similar agreement with respect to such individual, and the income and resources of the sponsor's spouse, shall be deemed to be the income and resources of such individual (in accordance with subsections (b) and (c)) for a period of [three years] *3 years* after the individual's entry into the United States. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

* * * * * * *

(c) In determining the amount of income of an alien during the period of [three years] *3 years* after such alien's entry into the United States, the reduction in dollar amounts otherwise required under section 1612(a)(2)(A)(i) shall not be applicable if such alien is living in the household of a person who is a sponsor (or such sponsor's spouse) of such alien, and is receiving support and maintenance in kind from such sponsor (or spouse), nor shall support or maintenance furnished in cash or kind to an alien by such alien's sponsor (to the extent that it reflects income or resources which were taken into account in determining the amount of income and resources to be deemed to the alien under subsection (a) or (b)) be considered to be income of such alien under section 1612(a)(2)(A).

(d)(1) Any individual who is an alien shall, during the period of [three years] *3 years* after entry into the United States, in order to be an eligible individual or eligible spouse for purposes of this title, be required to provide to the Secretary such information and documentation with respect to his sponsor as may be necessary in order for the Secretary to make any determination required under this section, and to obtain any cooperation from such sponsor necessary for any such determination. Such alien shall also be required to provide to the Secretary such information and documentation as the Secretary may request and which such alien or his sponsor provided in support of such alien's immigration application.

* * * * * * *

(e) Any sponsor of an alien, and such alien, shall be jointly and severally liable for an amount equal to any overpayment made to such alien during the period of [three years] *3 years* after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause for such failure existed. Any such overpayment which is not repaid to the Secretary or recovered in accordance with section 1631(b) shall be withheld from any subsequent payment to

which such alien or such sponsor is entitled under any provision of this Act.

* * * * * * *

SECTION 4 OF THE EMERGENCY UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1993

[SEC. 4. PROFILING OF NEW CLAIMANTS.

[(a) GENERAL RULE.—The Secretary of Labor shall establish a program for encouraging the adoption and implementation by all States of a system of profiling all new claimants for regular unemployment compensation (including new claimants under each State unemployment compensation law which is approved under the Federal Unemployment Tax Act (26 U.S.C. 3301–3311) and new claimants under Federal unemployment benefit and allowance programs administered by the State under agreements with the Secretary of Labor), to determine which claimants may be likely to exhaust regular unemployment compensation and may need reemployment assistance services to make a successful transition to new employment.

[(b) TECHNICAL ASSISTANCE TO STATES.—The Secretary of Labor shall provide technical assistance and advice to the States in the development of model profiling systems and the procedures for such systems. Such technical assistance and advice shall be provided by the utilization of such resources as the Secretary deems appropriate, and the procedures for such profiling systems shall include the effective utilization of automated data processing.

[(c) FUNDING OF ACTIVITIES.—For purposes of encouraging the development and establishment of model profiling systems in the States, the Secretary of Labor shall provide to each State, from funds available for this purpose, such funds as may be determined by the Secretary to be necessary.

[(d) REPORT TO CONGRESS.—Within 30 months after the date of the enactment of this Act, the Secretary of Labor shall report to the Congress on the operation and effectiveness of the profiling systems adopted by the States, and the Secretary's recommendation for continuation of the systems and any appropriate legislation.

[(e) STATE.—For purposes of this section, the term "State" has the meaning given such term by section 3306(j)(1) of the Internal Revenue Code of 1986.

[(f) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this Act.]

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–269

PROVIDING FOR CONSIDERATION OF H.R. 3167

SEPTEMBER 29, 1993.—Referred to the House Calendar and ordered to be printed

Mr. BONIOR, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 265]

The Committee on Rules, having had under consideration House Resolution 265, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

The following are the amendments made in order under House Resolution 265.

1. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE JOHNSON OF CONNECTICUT OR HER DESIGNEE, DEBATABLE FOR NOT TO EXCEED 20 MINUTES

At the end of section 2 of the bill, insert the following new subsection:

(f) LOW-UNEMPLOYMENT STATES NOT ELIGIBLE FOR EXTENSION.—No emergency unemployment compensation shall be payable in any State by reason of the amendments made by this section unless the average rate of total unemployment in such State for the period consisting of the most recent 3 calendar months for which data are published before the date of the enactment of this Act is 5 percent or greater.

2. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE SWIFT OF WASHINGTON OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 20 MINUTES

At the end of the bill, add the following:

SEC. 8. TREATMENT OF RAILROAD WORKERS.

(a) EXTENSION OF PROGRAM.—

(1) IN GENERAL.—Paragraphs (1) and (2) of section 501(b) of the Emergency Unemployment Compensation Act of 1991 (Public Law 102–164, as amended) are each amended by striking "October 2, 1993" and inserting "February 5, 1994".

69–006

(2) CONFORMING AMENDMENT.—Section 501(a) of such Act is amended by striking "October 1993" and inserting "February 1994".

(b) LENGTH OF BENEFITS DURING PERIOD OF EXTENSION.—Section 501(d)(2)(B)(ii) of such Act is amended by striking "on and after the date on which a reduction in benefits is imposed under section 102(b)(2)(A)(iv)" and inserting "after October 2, 1993".

(c) TERMINATION OF BENEFITS.—Section 501(e) of such Act is amended—

(1) by striking "October 2, 1993" and inserting "February 5, 1994", and

(2) by striking "January 15, 1994" and inserting "April 30, 1994".

O

103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–270

ANTI-REDLINING IN INSURANCE DISCLOSURE ACT

SEPTEMBER 29, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany H.R. 1188]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1188) to provide for disclosures for insurance in interstate commerce, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti Redlining in Insurance Disclosure Act".

SEC. 2. FINDINGS AND CONSTRUCTION.

(a) FINDINGS.—The Congress finds that—

(1) disparities in property and casualty insurance coverage provided by insurers engaged in interstate commerce between areas of different incomes and racial composition could adversely affect interstate commerce and the cost and availability of insurance for consumers, and

(2) appropriate disclosures of information by insurers would benefit consumers and insurance regulators.

(b) CONSTRUCTION.—Nothing in this Act is intended to, nor shall it be construed to, encourage unsound underwriting practices.

SEC. 3. MAINTENANCE OF INFORMATION AND PUBLIC DISCLOSURE.

(a) GENERAL RULE.—

(1) DESIGNATED INSURERS.—

(A) IN GENERAL.—Except as provided by subsection (b)(7), each designated insurer shall, in accordance with subsection (b), annually compile, submit to the Secretary, and make available to the public for each calendar year and for designated lines of insurance in a designated MSA—

(i) the total number of policies, total exposure units (in car years and house years), and total earned premium of insurance policies by designated line which were issued by such insurer and the new written exposure units, exposure units canceled, and the exposure units not renewed by such insurer, and

(ii) the number of licensed agents of such insurer whose principal place of business is located in such designated MSA and the number within each 5-digit zip code in such designated MSA and with respect to each such agent, whether such agent is an employee, independent contractor working exclusively for such insurer, or an independent contractor appointed to represent such insurer on a non-exclusive basis.

(B) SUBMISSIONS AND AVAILABILITY.—The information described in subparagraph (A) shall be—

(i) submitted to the Secretary in accordance with subsection (d), and

(ii) made available to the public, in accordance with subsection (b)(2), for inspection and copying, at cost, at the home office of the insurer and at a central depository, established under subsection (c), by the Secretary.

(2) NON-DESIGNATED INSURERS.—Except as provided in subsection (b)(7), every insurer which sells an insurance policy in a designated line of insurance in a designated MSA and which is not a designated insurer in such MSA shall submit to the Secretary for each calendar year in accordance with subsection (d) and regulations of the Secretary the total exposure units (in car years and house years) of insurance policies in a designated line sold in such MSA. With respect to such policies, the insurer shall report the designated MSA where the insured risks are located for which such insurance is issued and within such MSA report the 5-digit zip code where the risk is located.

(b) REQUIREMENTS.—

(1) CONTENT.—The information required to be maintained and made available under subsection (a)(1) shall be itemized in order to clearly and conspicuously disclose the policies, the exposure units, and the premium amount for each line of insurance for which information is required and be itemized by the 5-digit zip code where the risks are located.

(2) AVAILABILITY TO THE PUBLIC.—The information required to be maintained and made available under subsection (a) shall be made available to the public on a timetable determined by the Secretary but not later than October 1 of the calendar year following the calendar year for which the information is required to be made available, except that such information shall not be made available to the public until it is available in its entirety but it shall be made available if not all the information required to be reported is available on such October 1 or on the date determined by the Secretary.

(3) SPECIFICATION OF DATA.—

(A) IN GENERAL.—With respect to information which is required to be maintained and made available under subsection (a)(1), the Secretary shall

by regulation establish specifications for the collection and public reporting of such information with respect to the following lines of insurance: private passenger automobile, homeowners, and dwelling fire and allied lines. The specifications shall—

(i) provide that information be aggregated among similar policyholders and reported on that basis,

(ii) be designed to collect information with respect to the availability, cost, and type of insurance coverage between and among various geographic areas,

(iii) detail what data elements should be collected,

(iv) provide for the collection of information on an individual insurer basis,

(v) minimize burdens on insurance agents, including independent insurance agents,

(vi) provide the data required by clause (ii) with the least burden on insurers, particularly small insurers,

(vii) take into account the types of data collected under the Home Mortgage Disclosure Act of 1975,

(viii) take into account existing statistical reporting systems in the insurance industry,

(ix) require itemization by 5-digit zip code, and

(x) include information on policies written in a residual market.

(B) CONSULTATIONS.—In developing the specifications in subparagraph (A), the Secretary shall consult with—

(i) other Federal agencies with appropriate expertise,

(ii) State insurance regulators,

(iii) representatives of the insurance industry, including statistical agents,

(iv) representatives of insurance producers, including minority insurance producers, and

(v) consumer, community, and civil rights groups who are representative of a diversity of geographic locations.

(C) EFFECTIVE DATE.—The regulation under subparagraph (A) shall be issued no later than 270 days after the date of the enactment of this Act.

(4) COMMERCIAL INSURANCE STUDY AND PILOT PROJECT.—

(A) STUDY.—The Secretary shall conduct a study regarding the availability of commercial insurance (other than professional liability insurance, workers compensation insurance, and title insurance) with special emphasis on the availability of commercial insurance for small business. The study shall focus on—

(i) an appropriate definition for small business; and

(ii) preliminary views regarding the availability, cost, and type of insurance coverage for small business, which may be based on surveys of members of the small business community.

In conducting the study, the Secretary shall consult with interested parties from a diversity of locations, including State insurance regulators, consumer, community, and civil rights groups, representatives of small business, representatives of the insurance industry, including statistical agents, and representatives of insurance producers, including minority insurance producers. The Secretary shall submit a report detailing the findings of the study to the Committee on Energy and Commerce of the House of Representatives and the appropriate committee of the Senate no later than 18 months following the date of enactment of this Act.

(B) PROPOSAL OF PILOT PROJECT.—Concurrent with the conduct of the study under subparagraph (A), the Secretary shall develop a proposed data collection pilot project in the 5 largest MSA's to help determine the need for any further data collection requirements to evaluate the availability, cost, and type of insurance coverage for small business. In developing the proposed pilot project, the Secretary shall consult with interested parties from a diversity of locations, including State insurance regulators, consumer, community, and civil rights groups, representatives of small business, representatives of the insurance industry, including statistical agents, and representatives of insurance producers, including minority insurance producers. The Secretary shall submit a specific proposal for a pilot project to the Committee on Energy and Commerce of the House of Representatives and the appropriate committee of the Senate no later than 18 months following the date of enactment of this Act.

(C) SPECIFICATIONS FOR PILOT PROJECT.—Immediately following the submission of the proposal for a pilot project, the Secretary shall, by regulation, establish specifications for the collection and public reporting of information with respect to commercial insurance for the proposed pilot project. As part of the specifications, the Secretary shall designate the 5 largest MSA's for purposes of the pilot project. The specifications shall—

(i) provide that information be aggregated among similar policyholders and reported on that basis,

(ii) be designed to collect information with respect to the availability, cost, and type of insurance coverage between and among various geographic areas,

(iii) provide for the collection of information on an individual insurer basis,

(iv) provide the data required by clause (ii) with the least burden on insurers, particularly small insurers, and insurance agents, including independent insurance agents,

(v) take into account existing statistical reporting systems in the insurance industry and use existing data sources to the maximum practical extent,

(vi) include information on policies written in a residual market.

(vii) detail what data elements should be collected,

(viii) detail what insurers should be designated insurers for purposes of the pilot project,

(ix) detail what lines of commercial insurance should be designated for purposes of the pilot project, with particular consideration given to commercial fire and business owners lines,

(x) include an appropriate definition of small business, if necessary,

(xi) provide data representative of at least 2 years of experience and provide that the pilot project will terminate no later than 2 years after its inception, and

(xii) provide adequate lead time to insurers designated under clause (viii) for the reporting to begin.

The regulation shall be issued within 2 years of the date of enactment of this Act.

(D) REPORTING UNDER PILOT PROJECT.—Insurers designated under subparagraph (C)(viii) shall report to the Secretary with respect to lines of insurance designated under subparagraph (C)(ix) in the 5 largest MSA's, pursuant to the regulation issued by the Secretary in subparagraph (C).

(E) ANALYSIS OF DATA UNDER PILOT PROJECT.—At the conclusion of the pilot project, the Secretary shall analyze the data collected. Within 1 year of the conclusion of the pilot project, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the appropriate committee of the Senate on—

(i) any conclusions of the Secretary regarding the data collected under the pilot project, particularly regarding the availability, cost, and type of commercial insurance for small business, and

(ii) the need for further data collection requirements to evaluate the availability, cost, and type of such coverage or to help ensure the availability of such coverage.

(5) PERIOD OF MAINTENANCE.—Any information required to be compiled and made available under subsection (a) shall be maintained and made available for a period of 3 years after the close of the first year during which such information is required to be maintained and made available.

(6) FORMAT FOR DISCLOSURES.—Subject to subsection (c), the Secretary shall prescribe a standard format for making information available as required by subsection (a). Such format shall encourage the submission of information in a form readable by a computer.

(7) EXEMPTION.—

(A) SECRETARIAL ACTION.—If the Secretary determines that a State has enacted a law, or otherwise implemented a requirement under which—

(i) insurers operating in that State are subject to disclosure requirements on a 5-digit zip code basis substantially similar to those of subsection (a),

(ii) there are adequate provisions for enforcement, and

(iii) the information disclosed under the State law or requirement is made available to the Secretary and the public in a manner similar to other information disclosed under subsection (a),

then the Secretary shall by regulation exempt insurers operating in that State from complying with the requirements of subsection (a) with respect to that State's portions of the designated MSA's. If the Secretary determines that the State law or requirement no longer meets the criteria of clauses (i) through (iii) or is no longer in effect, the Secretary shall by regulation revoke the exemption.

(B) UNITED STATES PROGRAM.—Reporting shall not be required under subsection (a) with respect to insurance provided by a program underwritten or administered by the United States.

(c) PUBLIC ACCESS SYSTEM.—The Secretary shall implement a system to facilitate public access to information required to be made available to the public under subsection (a). Such system shall include arrangements for a central depository of information in each designated MSA and for a telephone number which can be used by the public, at cost, to request such information. Statements shall be made available to the public for inspection and copying at such central depository of information for all designated insurers within such MSA. The Secretary shall also make copies of such statements available in forms readable by widely used personal computers, such as in disc format. The Secretary may charge a fee for such information, which may not exceed the amount, determined by the Secretary, that is equal to the cost of reproducing the information.

(d) SUBMISSION TO SECRETARY.—With respect to the information required to be submitted under subsection (a) to the Secretary, the Secretary shall develop regulations prescribing the format and method for submitting such information. Such regulations shall ensure uniformity among insurers, to the extent practicable, in the format used for reporting, including the definitions of data elements. Any reporting insurer may submit in writing to the Secretary such additional data or explanations as it deems relevant to the decision by such insurer to sell insurance.

SEC. 4. DESIGNATIONS.

(a) DESIGNATIONS BY THE SECRETARY.—

(1) DESIGNATIONS OF MSA'S.—The Secretary shall designate the MSA's for which reporting is required under section 3(a). The Secretary shall designate the 25 MSA's having the largest population.

(2) DESIGNATION OF INSURERS.—For each MSA designated under paragraph (1), the Secretary shall take the following actions:

(A) The Secretary shall designate the insurers transacting insurance business in such MSA for which reporting is required under section 3(a). At a minimum, the Secretary shall designate the 25 insurers in such MSA having the largest premium volume in the designated lines of insurance in each State in which such MSA is located.

(B) In addition to the insurers designated under subparagraph (A), the Secretary shall also designate any entity primarily providing insurance in a designated line of insurance as part of a residual market established by State law.

(C) The Secretary shall also designate, in addition to the insurers designated under subparagraphs (A) and (B), insurers who specialize in selling insurance in urban areas, including surplus lines insurers.

(D) The Secretary shall also designate, in addition to the insurers designated under subparagraph (A), (B), and (C) insurers such that insurers representing at least 80 percent of the premium volume in each State in which such MSA is located in the designated line of insurance are designated in such MSA. The Secretary may not designate additional insurers under this subparagraph if their market share in the designated line of insurance in the applicable States, as measured by premium volume in each State in which such MSA is located, is under 1 percent.

(E) In addition to the insurers designated under subparagraph (A), (B), (C), and (D) the Secretary may by regulation designate additional insurers in a MSA if the designation of additional insurers is necessary to provide valid data with respect to the availability, cost, and type of insurance in the MSA.

(F) The Secretary shall revoke the designation of an insurer designated under subparagraph (A) as follows: If such designated insurer has a market share in a designated line of insurance in a MSA, as measured by premium volume in each State in which such MSA is located, of under 1 percent, the Secretary shall revoke the designation of such insurer beginning with the insurer with the smallest market share of such insurance if the remainder of the designated insurers have a market share of at least 75 percent of such insurance as measured by premium volume in each State in which

such MSA is located. In addition, the Secretary may revoke the designation of any insurer designated under subparagraph (A) with a market share in a designated line of insurance in a MSA, as measured by premium volume in each State in which such MSA is located, of under 1 percent if such designation has not been revoked under this subparagraph and if such insurer primarily sells insurance in rural areas of such MSA.

(G) For purposes of this paragraph, insurers which are affiliated or are members of the same group shall be considered together as one insurer.

(3) DESIGNATION OF LINES OF INSURANCE.—For each MSA designated under paragraph (1) the following are the designated lines of property and casualty insurance for which reporting is required under section 3:

(A) Private passenger automobile insurance.

(B) Homeowners insurance.

(C) Dwelling fire and allied lines of insurance.

(4) TIMING OF DESIGNATIONS.—

(A) INITIAL DESIGNATIONS.—The Secretary shall make initial designations required by paragraphs (1), (2), and (3) no later than July 1 of the year preceding the first year for which reporting is required under section 3. Such initial designations shall be effective for 5 calendar years from the date of designation.

(B) SUBSEQUENT DESIGNATIONS.—Not later than July 1 of the year preceding the fifth year after a designation under subparagraph (A) or this subparagraph, the Secretary shall make another designation to be effective upon the expiration of such 5 years and such designation shall be effective for 5 calendar years from the date of designation.

(C) NOTICE.—The Secretary shall notify persons involved in the designations no later than the July 15 which follows the designation.

(b) OBTAINING INFORMATION.—The Secretary may obtain from insurers such information as the Secretary may require to make designations under subsection (a).

SEC. 5. TASK FORCE ON AGENCY APPOINTMENTS.

(a) ESTABLISHMENT.—Within 90 days of the date of the enactment of this Act, the Secretary shall establish a task force on insurance agency appointments. The task force shall—

(1) consist of representatives of appropriate Federal agencies, property and casualty insurance agents, including specifically minority insurance agents, property and casualty insurance companies, State insurance regulators, and public interest groups,

(2) have a significant representation from minority insurance agents, and

(3) be chaired by the Secretary or the Secretary's designee.

(b) FUNCTION.— The task force shall—

(1) review the problems inner city and minority agents may have in receiving appointments to represent property and casualty insurance companies,

(2) review the practices of insurers in terminating agents and consider the effect such practices have on the availability or cost of insurance, especially in underserved areas, and

(3) recommend solutions to improve the ability of inner city and minority insurance agents to market property and casualty insurance products, including steps property and casualty insurance companies should take to increase their appointments of such agents.

(c) REPORT AND TERMINATION.—The task force shall report to the Committee on Energy and Commerce of the House of Representatives and the appropriate Committee of the Senate its findings under paragraphs (1) and (2) of subsection (b) and its recommendations under paragraph (3) of subsection (b) within 2 years after the date of the enactment of this Act. The task force shall terminate when the report is submitted to the Committees.

SEC. 6. IMPLEMENTATION OF SECTION 3.

(a) REGULATIONS.—The Secretary shall promulgate such regulations as may be necessary to carry out section 3. Such regulations may—

(1) contain such classifications, differentiations, or other provisions, and

(2) may provide for such adjustments and exceptions for any class of transactions,

as in the judgment of the Secretary are necessary and proper to effectuate the purposes of such section and to prevent circumvention or evasion thereof or to facilitate compliance therewith.

(b) DATA COLLECTION CONTRACTOR.—The Secretary may contract with a data collection contractor to carry out the Secretary's responsibilities under section 3 if the

contractor agrees to collect and make available the data pursuant to the terms and conditions of such section. A statistical agent may also be a data contractor.

(c) ROLE OF STATISTICAL AGENTS.—

(1) ACCEPTANCE OF DATA.—The Secretary and, if applicable, the contractor under the subsection (b) contract may accept data reported under section 3(a) by a statistical agent acting on behalf of more than one insurer if—

(A) the statistical plan used by the statistical agent for the reporting of data on insurance provides for the reporting of data in a manner compatible with section 3(a),

(B) the statistical agent reports such data on an individual insurer basis, and, at the discretion of the Secretary, on an aggregate basis,

(C) the statistical agent provides adequate procedures to protect the integrity of the data reported,

(D) the statistical agent has procedures in place which ensure that data reported under the statistical plan in connection with reporting under this Act and submitted to the Secretary are not subject to adjustment by the statistical agent or an insurer for reasons other than technical accuracy and conformance to the statistical plan,

(E) the statistical agent ensures that the data of one insurer is not subject to review by other insurers before public availability, and

(F) the statistical agent provides for the reporting of data in a manner compatible with the format prescribed by the Secretary under section 3(d).

(2) DISCONTINUANCE OF DATA ACCEPTANCE.—The Secretary may, after providing an opportunity for a hearing, discontinue accepting data reported under section 3(a) by a statistical agent acting on behalf of more than one insurer if the Secretary determines the requirements for acceptance of data in paragraph (1) are no longer met.

(d) ROLE OF GAO.—The Comptroller General shall have the authority to review and audit any data collection and reporting performed under section 3, whether by the Secretary, the contractor under the subsection (b) contract, or a statistical agent, to ensure that the integrity of the data collected and reported is protected.

(e) BURDENS ON INSURANCE AGENTS.—In prescribing regulations under this Act, the Secretary shall take into consideration the administrative, paperwork, and other burdens on insurance agents, including independent insurance agents, involved in complying with the requirements of this Act and shall minimize the burdens imposed by such requirements with respect to such agents.

SEC. 7. RELATION TO STATE LAWS.

This Act does not annul, alter, or affect, or exempt the obligation of any insurer subject to this Act to comply with the laws of any State or subdivision thereof with respect to public disclosure and recordkeeping.

SEC. 8. COMPILATION OF AGGREGATE DATA.

(a) SCOPE OF DATA AND TABLES.—The Secretary shall compile each year, for each MSA, data aggregated by 5-digit zip code for all insurers who are subject to section 3 or who are exempt from section 3 under subsection (b)(7)(A) of such section. The Secretary shall also produce tables indicating, for each MSA, insurance policies aggregated for various categories of 5-digit zip codes grouped according to location, age of property, income level, and racial characteristics of neighborhood.

(b) AGGREGATION OF INFORMATION.—Statistical agents may aggregate the data of insurers that report to them and may provide such information to the Secretary. The Secretary may also provide the individual company data submitted by insurers to statistical agents for aggregation.

(c) AVAILABILITY TO PUBLIC.—The data compiled and the tables produced pursuant to subsection (a) shall be made available to the public on a timetable determined by the Secretary but not later than October 1 of the year following the calendar year on which the data and tables are based.

SEC. 9. ENFORCEMENT.

(a) CIVIL PENALTIES.—Any insurer who is determined by the Secretary, after providing opportunity for a hearing on the record, to have violated the requirements of section 3 shall be subject to a civil penalty of not to exceed $5,000 for each day during which such violation continues.

(b) INJUNCTION.—The Secretary may bring an action in an appropriate United States district court for appropriate declaratory and injunctive relief against any insurer who violates the requirements of section 3.

(c) INSURER LIABILITY.—An insurer shall be responsible under subsections (a) and (b) for any violation of a statistical agent acting on behalf of the insurer.

SEC. 10. SUNSET.

(a) EXPIRATION.—Except as provided in subsection (b), this Act shall not be in effect after the expiration of 5 years from its effective date. Prior to the expiration of 4 years from such date, the Secretary shall report to the Energy and Commerce Committee of the House of Representatives and the appropriate committee of the Senate—

(1) the quality of data received under section 3 and the effectiveness of the data requirement, including the relation between the cost of such data gathering and the benefits from having such data available,

(2) the appropriateness of the geographic data reporting units,

(3) the need for continued reporting by the designated insurers in urban areas,

(4) the efforts of insurers to meet the insurance needs of minority and low-income neighborhoods, and

(5) such other information as the Secretary determines will assist in considering an extension of this Act.

(b) EXTENSION.—Based on the Secretary's report on the need described in subsection (a)(3) and the information described in subsection (a)(5), the Secretary may extend this Act for one period of 2 years.

SEC. 11. STUDIES.

(a) STUDY OF INFORMATION ON INSURANCE APPLICANTS.—

(1) IN GENERAL.—The Secretary shall conduct a study to determine the feasibility and utility of the collection of information with respect to the characteristics of applicants for insurance and reasons for rejection of applicants. The study shall examine the extent to which—

(A) oral applications or representations are used by insurers and agents in making determinations regarding whether or not to insure a prospective insured,

(B) written applications are used by insurers and agents in making determinations regarding whether or not to insure a prospective insured,

(C) written applications are submitted after the insurer or agent has already made a determination to provide insurance to a prospective insured or has determined that the prospective insured is eligible for insurance, and

(D) prospective insureds are discouraged from submitting applications for insurance based, in whole or in part, on—

(i) the location of the risk to bo insured,

(ii) the race or ethnicity of the prospective insured,

(iii) the racial or ethnic composition of the neighborhood in which the risk to be insured is located, and

(iv) in the case of residential property insurance, the age and value of the risk to be insured.

(2) REPORT.—The Secretary shall report the results of the study under paragraph (1) to the Committee on Energy and Commerce of the House of Representatives and the appropriate Committee of the Senate within 18 months of the date of the enactment of this Act.

(b) STUDY OF INSURER ACTIONS TO MEET INSURANCE NEEDS OF CERTAIN NEIGHBORHOODS.—The Secretary shall conduct a study of various practices, actions, programs, and methods undertaken by insurers to meet the property and casualty insurance needs of residents of low- and moderate-income neighborhoods, minority neighborhoods, and small businesses located in such neighborhoods. The Secretary may establish a task force of interested parties, including representatives of insurance companies, insurance agents, including minority agents, and consumer representatives to discuss additional practices, actions, programs, and methods to meet these needs. The Secretary shall report the results of the study, including any recommendations, to the Committee on Energy and Commerce of the House of Representatives and the appropriate Committee of the Senate no later than 2 years after the date of the enactment of this Act.

SEC. 12. DEFINITIONS.

For purposes of this Act:

(1) The term "commercial insurance" means any line of property and casualty insurance, except private passenger automobile and homeowner's insurance.

(2) The term "designated insurer" means an insurer designated by the Secretary pursuant to section 4(a)(2).

(3) The term "designated line" means a line of insurance specified in section 4(a)(3).

(4) The term "exposure units" means units insured against risk of loss by an insurer and the term "units" means an automobile or the number of units in a building.

(5) The term "insurer" means any corporation, association, society, order, firm, company, partnership, individual, or aggregation of individuals which is subject to examination or supervision by any State insurance regulator, or which is doing or represents an insurance business. Such term does not include an individual or entity which represents an insurer as agent for the purpose of selling or which represents a consumer as a broker for the purpose of buying insurance.

(6) The term "MSA" means a Metropolitan Statistical Area or a Consolidated Metropolitan Statistical Area and the term "designated MSA" means an MSA designated by the Secretary pursuant to section 4(a)(1).

(7) The term "property and casualty insurance" means insurance against loss of or damage to property, insurance against loss of income or extra expense incurred because of loss of, or damage to, property, and insurance against third party liability claims caused by negligence or imposed by statute or contract.

(8) The term "residual market" means an assigned risk plan, joint underwriting association, or any similar mechanism designed to make insurance available to those unable to obtain it in the voluntary market.

(9) The term "Secretary" means the Secretary of Commerce

(10) The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

SEC. 12. EFFECTIVE DATE

The requirements of this Act shall take effect with respect to information on insurance described in section 3 and developed in and after calendar year 1995.

PURPOSE AND SUMMARY

Over the last several months, the Committee and its Subcommittee on Commerce, Consumer Protection, and Competitiveness have examined concerns about possible redlining practices of insurance companies. At the Subcommittee's two hearings, in Washington on March 3, 1993, and in Chicago on April 26, 1993, there were reports about a variety of practices that some insurance companies may be using to deny access to insurance to the residents of urban areas. The Subcommittee also reviewed reports of disparities in the coverage and price of property and automobile insurance between high income and white communities, on the one hand, and low income and minority communities, on the other.

The insurance industry has questioned the design, execution, and analysis of these reports and states that premium disparities are the result of sound underwriting practices reflecting the risks in different communities. The industry also points to studies it has sponsored which indicate that over 95 percent of homeowners have homeowners insurance.

As a practical matter, access to property insurance is a necessity for mortgage loans and is often essential for access to small business loans. Without access to affordable insurance, small businesses in urban areas cannot prosper nor generate needed jobs. Similarly, access to affordable automobile insurance is often essential for residents of the inner cities to keep and hold jobs.

The legislation, H.R. 1188, the Anti Redlining in Insurance Disclosure Act, would help to address this situation by requiring disclosure by insurance companies of their insurance activities in the 25 largest urban areas, on a 5-digit zip code basis. These disclosure requirements would apply to private passenger automobile and homeowners, dwelling fire and allied property lines of insurance. The legislation also requires reporting of agent location by 5-digit

zip code. The information generated by this legislation would help determine the nature and extent of insurance availability. The public disclosure of this information would also serve as a disincentive against discriminatory behavior. The Act would be administered by the Department of Commerce and would sunset after five years, although the Secretary of Commerce could extend it once for two years.

BACKGROUND AND NEED FOR THE LEGISLATION

With new emphasis on the importance of revitalizing the inner cities, one of the problems that must be faced is the concern about lack of availability of affordable insurance in inner city areas. Recent studies suggest that the problem of availability may be due to redlining by insurance companies, a charge which the companies deny.

I. Background on redlining

The term "redlining" dates back to the time when insurance companies drew a red line on a map to indicate areas where they would not sell insurance, areas that often tended to be lower income, inner-city areas. The National Association of Insurance Commissioners (NAIC) Model Unfair Trade Practices Act defines and prohibits: "unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless such action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience."

Today, however, redlining may take more subtle forms, such as differences in the price or terms of insurance coverage based on geographic area or the shifting of policyholders into residual markets that are not based on sound underwriting principles. (Residual markets are generally state-established plans to provide auto or property insurance to policy holders who are unable to purchase it in the voluntary market, sometimes at higher prices and with less coverage than in the voluntary market. Insurance companies in a state are generally required to participate in the residual market, with the companies either being assigned policyholders or jointly sharing profits and losses.) Redlining practices can also involve agents, for example, when agents discourage customers from urban areas, perhaps because of the incentives or commission structures established by the companies they represent. Alternatively, insurance companies may avoid placing agents in certain neighborhoods.

In general, rates for property insurance and auto insurance are based on several factors. A key rating factor for both lines of insurance in most states is geographic location, with urban rates sometimes considerably higher than suburban rates. The insurance industry argues that such territorial rating is not "redlining", but a sound business practice, due to high risks of theft, vandalism, arson, crime, fraud and traffic congestion. Some critics counter that location of residence has no relation to driving ability, that urban road congestion is partly due to many suburban commuters, that location of a building in a particular zip code does not reflect on

the risk to that building, and that fire services are often more available and building codes stricter in an urban area.

II. Past efforts to deal with redlining

Insurance redlining is not a new issue. Concern about redlining by insurers has been present for many years.

In reaction to the urban riots of the late 1960's, President Johnson appointed the National Advisory Commission on Civil Disorders to investigate the origins of the riots and make recommendations to prevent them in the future. In turn, the Commission established the National Advisory Panel on Insurance in Riot-Affected Areas. In 1968, the Insurance Advisory Panel released a report entitled, "Meeting the Insurance Crisis Of Our Cities". The report noted, "Without insurance, buildings are left to deteriorate; services, goods, and jobs diminish. Efforts to rebuild our nation's inner cities cannot move forward. Communities without insurance are communities without hope."

The report concluded that there was a serious lack of property insurance in the inner cities and that the recent riot losses further reduced the supply of insurance. The report recommended that states establish "FAIR" (Fair Access to Insurance Requirements) plans, which would serve as a residual market for those unable to buy property insurance in the voluntary market. The report also recommended the establishment of a Federal riot reinsurance program, which would reinsure private insurers for large riot-related losses. The report further recommended that rates in FAIR plans not exceed those in the voluntary market except for surcharges which would only be allowed for demonstrable hazards of the property itself.

In response, Congress passed the Urban Property Protection and Reinsurance Act of 1968, establishing a riot reinsurance program, and a number of states established FAIR plans. The riot reinsurance was conditioned upon participation by insurers in the FAIR plans. The Department of Housing and Urban Development (HUD) and the Federal Insurance Administration (then part of HUD, but since moved to the Federal Emergency Management Agency) were given general oversight authority over FAIR plans.

However, a report by the Federal Insurance Administration in 1974, "Full Insurance Availability," revealed a number of problems with FAIR plans (and similar state plans in the residual market for automobile insurance). In particular, according to the report, such plans could be used "to relegate significant numbers of risks to second-class coverage, treatment, and cost on the basis of arbitrary underwriting judgments that ultimately benefit neither the consumer nor the insurer."

Concern continued about redlining, as reflected in a 1978 report by the HUD and the Federal Insurance Administration, "Insurance Crisis in Urban America." The report concluded that redlining was widely practiced by insurers, generally by zip code, and had an "undeniable racial component". According to the report, the practice was: "not based on any sound underwriting standards but rather on highly subjective criteria that would appear to result from unfounded generalizations or preconceptions about urban property risks."

The report also noted that many good risks were forced to seek insurance in FAIR plans, at rates higher than in the voluntary market. Partly as a result of the report, Congress in 1978 mandated that rates charged in FAIR plans should not exceed prevailing rates in voluntary markets. However, this requirement was subsequently repealed in the 1981 Reconciliation Act.

Federal involvement in addressing redlining was reduced in the 1980's. The Federal riot reinsurance program was terminated effective November 30, 1983, after the 98th Congress determined that the need for this program had been eliminated. The Federal Insurance Administration's authority to review state FAIR plans terminated on September 30, 1985. While FAIR plans continue to exist in about 26 states and the District of Columbia, they are a matter of state law and have no direct Federal oversight.

At the same time, the 1980's saw the consumer revolt over auto insurance rates growing, for example, with the passage of Proposition 103 in California in 1988. While the consumer concern focused on auto insurance rates in general, one aspect of concern was territorial rating and the resulting rate disparities between different geographic areas.

More recently, partly in response to the concern about insurance availability following the Los Angeles riots, California Insurance Commissioner John Garamendi proposed regulations to require insurers to report data to the insurance department on their market penetration in urban areas and allow insurers which served inner-city communities well to receive a higher rate of return, while those who served inner cities poorly would be allowed a lower rate of return.

The NAIC has established a Subgroup on Urban Insurance Issues to try to assess the extent of redlining and consider remedial measures. The NAIC is currently gathering data from individual states.

As a result of an October, 1992, decision by the United States Court of Appeals for the Seventh Circuit, *NAACP* v. *American Family Mutual Insurance Co.,* the Fair Housing Act may serve as a remedy for discrimination in property insurance. In 1989, HUD issued regulations, implementing the 1988 amendments to the Fair Housing Act, to forbid racial discrimination in the provision of property or hazard insurance on the ground that denial of property insurance may make it impossible to qualify for a mortgage loan and thus make housing unavailable in violation of the Act.

In this case, the National Association for the Advancement of Colored People (NAACP) brought suit against American Family Mutual Insurance Company, alleging racial discrimination in the provision of property insurance in Milwaukee. The insurance company moved to dismiss the case, arguing that the HUD regulations exceeded the scope of the statute, since Congress had declined in the past to amend the Fair Housing Act to explicitly include the sale of property insurance within the prohibition on discrimination. The company also argued that the McCarran-Ferguson Act preempted the application of such Federal law to the insurance company.

In October, 1992, the Seventh Circuit Court of Appeals ruled that the regulations were within HUD's authority. The Court also

ruled that the McCarran-Ferguson Act only preempted Federal law to the extent it was inconsistent with state law, but that Wisconsin had a statutory provision outlawing racial discrimination in insurance that was consistent with the HUD regulations. Thus, the HUD regulations were not preempted and the case could proceed. In May, 1993, the Supreme Court refused to review the ruling of the Seventh Circuit. The case is expected to go to trial in 1995.

Several states require some data reporting on the distribution of insurance policies by geographic area. However, advocacy groups have argued that more comprehensive Federal legislation, similar to the Home Mortgage Disclosure Act (HMDA), is needed, since in many cases adequate data is lacking to determine whether insurance redlining exists.

III. Recent redlining studies

A number of recent studies have been conducted which indicated redlining practices occurring in several cities.

In February, 1991, and August, 1992, Illinois Public Action issued reports reviewing auto insurance availability and affordability in Chicago. The reports concluded that two major auto insurance companies lack agents in inner-city areas of Chicago. The reports indicated that agents of the two companies often refuse to provide rate quotes over the telephone to residents of inner-city areas, thus discouraging the purchase of auto insurance. The reports also stated that policies from other companies, which were more willing to market in inner-city areas, were significantly more expensive.

And, at the March 3, 1993, hearing of the Commerce Subcommittee, Illinois Public Action testified that there are 52 State Farm office and 32 Allstate offices in the predominantly white 5th Congressional district. But in the Chicago portion of the 7th Congressional district, there are only six State Farm offices and two Allstate offices outside the downtown area.

At the subsequent April 26, 1993, Commerce Subcommittee field hearing in Chicago, Illinois Public Action amplified these findings. Public Action's testimony argued that State Farm and Allstate agents are disproportionately concentrated in northwest and southwest side neighborhoods. And, according to the testimony, State Farm and Allstate policies are also similarly disproportionately concentrated in northwest and southwest side neighborhoods. Furthermore, the testimony argued that these distribution patterns largely reflect the race and income patterns of Chicago communities.

According to Public Action, all of the areas with the greatest concentration of State Farm policies are in majority white communities, while all but one of the areas with the least concentration, outside the downtown area, are in majority African-American or Hispanic communities. The testimony indicated that Allstate had a similar concentration in the majority white community on the northwest and southwest side, although a significant proportion of Allstate's policies are in the higher income majority African-American communities. However, according to the testimony, most of the areas with the least concentration of Allstate polices, outside downtown, are in majority African-American or Hispanic low income communities. In sum, the testimony argued that State Farm appar-

ently avoids minority communities while Allstate seems to avoid poor communities.

State Farm and Allstate also testified at the Subcommittee's April 26, 1993, Chicago field hearing. In response to Illinois Public Action's testimony, both State Farm and Allstate denied allegations of redlining.

Allstate testified that it has 215 agents in 94 sales locations within the city of Chicago. Furthermore, Allstate stated that it advertises and solicits policyholders extensively throughout the Chicago market and writes substantial homeowners and auto insurance in all Chicago zip codes.

Allstate also testified that Illinois Public Action's premises and analysis of the Chicago urban insurance market were faulty and illogical. According to the testimony, this resulted in a study that is inaccurate with respect to Allstate's market penetration in and commitment to Chicago.

In Allstate's view, the location of agent offices is an inappropriate indication of whether insurance is available in any particular neighborhood or zip code. Allstate writes more homeowners and auto insurance in some zip codes where it does not have agents than in zip codes where it does. For example, in response to the Illinois Public Action testimony, Allstate indicated that its homeowners market share in the 7th Congressional District is 36.1 percent, higher than its homeowners penetration of 28.8 percent in the 5th Congressional District where it has more agents. Allstate also testified that its percentage of the auto and homeowners market is greater in Chicago than within the entire State of Illinois.

In response to the Illinois Public Action claims, State Farm testified that a disparity in the number of agents and policies between different Congressional Districts is not indicative of redlining. State Farm explained that its 165 agents serving policyholders for coverage of more than 300,000 cars, more than 175,000 homes and apartments, and more than 9,000 rental dwellings in Chicago have no "territories" and may sell insurance in any area in the city. State Farm argued that economic factors, not any racially motivated bias, account for the differences in State Farm sales activity in different areas.

In July, 1992, the New York City Department of Consumer Affairs released a study of auto insurance in New York City. The report, "The Poor Pay More * * * For Less, Part 2: Automobile Liability Insurance," concluded that New York City drivers, particularly in low income and minority communities, were disproportionately relegated to the residual market at higher cost. The report argued that even good drivers in inner-city neighborhoods were insured in the residual market. The report also concluded that major insurers avoid placing agents in inner-city areas. The report also argued that territorial rating, which was based on outdated territories which lacked statistical credibility, was a form of redlining.

On February 4, 1993, the Association of Community Organizations for Reform Now (ACORN) released a study of homeowners insurance, detailing apparent redlining practices by insurance companies in Chicago; Kansas City, Missouri; Milwaukee; Minneapolis-St. Paul; St. Louis; Bridgeport, Connecticut; Dallas; Washington; Des Moines; Detroit; Little Rock; New Orleans; New York; and Se-

attle. The study, "A Policy of Discrimination?: Homeowners Insurance Redlining in 14 Cities." examined underwriting criteria, such as geographic location, and its effect on three issues—insurance availability, insurance affordability, and quality of insurance coverage (the terms of coverage). The report contends there are large disparties in the coverage and price of property insurance between high income and white communities, on the one hand, and low income and minority communities, on the other. ACORN testified about the study at the March 3 Subcommittee hearing and at the April 26 Subcommittee field hearing in Chicago.

Among the conclusions of the ACORN study are:

> The level of coverage of occupied, single-family units in low-income and minority neighborhoods remains substantially below that of high-income and white neighborhoods, and units in minority neighborhoods are less likely to be covered than units in white neighborhoods of comparable income. For example, in Chicago, only 51.1% of occupied, single family units in low income neighborhoods, and only 57.6% in minority neighborhoods, were covered by any type of insurance, compared to 90.0% coverage in high income neighborhoods and 87.7% coverage in white areas. In St. Louis, only 67.3% of occupied, single family units in low income minority areas were covered, compared to 85.5% coverage in low income white areas.
>
> A principal explanation of the lower level of coverage in low-income and minority neighborhoods is the array of obstacles which the report argues are presented by insurance agents to residents seeking policies in those neighborhoods. In high income urban and suburban neighborhoods in the 13 cities in which test calls were conducted, callers were refused a quote over the phone only 8% and 6% of the time, respectively, compared to 38% for callers from low income neighborhoods. When callers from low income areas were persistent, they were usually unsuccessful in getting quotes, even on the second try. In test calls in New York City, agents refused to quote rates in lower income neighborhoods 26% of the time. But in upper income neighborhoods, both inside and outside the city, quotes were provided every time. In the upper income areas of New York, callers felt that agents were eager to do business 73% of the time in the suburbs and 69% of the time in the city. But in low income neighborhoods, callers felt that their business was being sought only 22% of the time.
>
> The price of policies (per thousand dollars of coverage) offered and written was significantly higher in low-income and minority areas than in high-income and white areas. For example, in every city, the premiums quoted to test callers were at a higher rate per thousand dollars of building coverage in low income neighborhoods than in high income areas. The national averages were $10.41 per thousand in low income areas, $5.25 per thousand in upper income urban areas, and $3.79 per thousand in upper income suburbs.

> There were significant disparities among neighborhoods with respect to policy cancellations, non-renewals, and rejections. For example, in Chicago and Milwaukee, the non-renewal rate for policy holders in low income neighborhoods was 95 percent and 67 percent higher, respectively, than for policy holders in high income neighborhoods. In both cases, the non-renewal rate for policy holders in minority areas was 157 percent higher than for policy holders in white areas.

Conversely, the insurance industry points to a number of industry sponsored studies from 1979 through 1993 which show that a large percentage of homeowners have homeowners insurance. In 1979, the American Insurance Association (AIA) sponsored a nationwide study on availability of homeowners insurance. That study showed that 98 percent of homeowners had homeowners insurance. Eighty eight percent of those surveyed had comprehensive coverage covering fire, theft, vandalism and liability. Ten percent had more limited coverage and two percent did not have coverage.

In 1980, R.L. Associates, a private research firm in Princeton, N.J., conducted a similar survey for the All-Industry-Research Advisory Council (now Insurance Research Council). This survey focused on the urban core of America, surveying urban core neighborhoods in six of the largest American cities. The results of the 1980 survey were consistent with those of the 1979 AIA study. The total percentage of homeowners with homeowners insurance increased from 98 percent to 99 percent and the percentage with comprehensive versus more limited coverages increased from 88 percent to 90 percent.

In 1993, a similar study was commissioned by AIA and performed by R.L. Associates. The national results in the 1993 survey again showed that homeowners have homeowners insurance. While the total percentage with insurance went back to 98 percent, 93 percent of homeowners surveyed have comprehensive homeowners coverage.

The Roper Organization Inc., a nationally known public opinion survey firm, included a question on homeowners insurance as part of a representative sample of 1,976 Americans for the 1992 "Public Attitude Monitor" published by the Insurance Research Council. Conducted during June 1992, the survey found that 93 percent of those surveyed owning homes had homeowners insurance. The Roper survey showed some variations in the share of homeowners with insurance by region, income, and community type. The survey indicated that homeowners living in central cities of metropolitan areas with populations of greater than 250,000 were more likely to have homeowners insurance (96 percent) than the population as a whole. Central city residents owning homes, including those living in very large cities with more than a million people, were more likely to have homeowners insurance than persons living in suburbs (95 percent) and those living in rural areas and small towns (91 percent). There were also regional and income variations. Homeowners with insurance ranged from 98 percent in the Northeastern region of the United States, to 91 percent in the South. In terms of household income, home insurance rates for the country as a whole were 82 percent for homeowners with less than $15,000

income, 95 percent for households with incomes from $15,000 to $30,000 and 96 percent for household incomes greater than $30,000, according to the Roper data.

The 1992 Roper findings are nearly identical to those from another national survey, conducted by Cambridge Reports Inc., an independent survey firm, in 1989 on home ownership and home insurance rates. The Cambridge survey found that 96 percent of homeowners nationally carried homeowners insurance.

While the insurance industry takes issue with the methodology of studies indicating that insurance redlining is a serious problem, advocacy and consumer organizations take issue with studies indicating that most homeowners have homeowners insurance and thus redlining is not a serious problem. In particular, the industry-cited studies have been criticized because they rely on telephone surveys, which may underrepresent lower income respondents, and because they focus on existing homeowners, not potential homeowners who may be denied the opportunity to own a home because of lack of access to insurance.

IV. H.R. 1188—The Anti Redlining in Insurance Disclosure Act

To address concerns about insurance redlining, H.R. 1188 was introduced on March 3. As amended by the Committee, this legislation will require insurance companies to disclose information about their insurance activities in the 25 largest urban areas, such as the breakdown of certain policies sold by 5-digit zip code. These disclosure requirements would apply to private passenger automobile and homeowners, dwelling fire and allied property lines of insurance. The legislation also requires reporting of agent location by 5-digit zip code, along with the number of cancellations and non-renewals by 5-digit zip code. The information generated by this legislation would help determine the nature and extent of insurance availability. The methodological disputes regarding studies of redlining discussed earlier only highlight the need for the objective insurance data collection provided for by the reported bill. The public disclosure of this information would also serve as a disincentive against discriminatory behavior. The Act would be administered by the Department of Commerce. The legislation would sunset after five years, although the Secretary of Commerce could extend it for one period of two years.

V. Potential uses of the data

It is important to note that the legislation is not intended to be regulatory in nature. The approach of the legislation is to require disclosure by insurance companies of their insurance activities in the 25 largest urban areas. The data that would be disclosed could be used in a variety of ways. On a macro or aggregate level, the data would help analyze the level of insurance coverage in an urban area. This data would help determine if potential public policy responses were necessary and, if so, the nature of those responses.

But this only one potential use. Data about individual companies would help analyze whether there are potential discriminatory patterns of insurance coverage by individual companies. The data itself would not prove that a company was engaging in discrimina-

tory practices, but the data could trigger a more intensive investigation of a company's practices. The data could also help analyze the role of residual markets in providing insurance coverage and how the residual market compares to the voluntary market.

The nature of any public policy responses would depend on the data. The data, and resulting investigations, could show that specific companies were engaging in discriminatory practices. This could lead to enforcement actions against individual companies, perhaps under applicable Federal law or individual state statutes. The data could show that most insurance companies were acting in a non-discriminatory fashion but that insurance availability in cities was a problem because of the nature of the urban marketplace. In that case, perhaps consideration would be given to a variety of public policy options, such as a regulatory response, an improvement in the role of residual markets, or some governmental role in the provision of insurance in urban areas.

HEARINGS

The Committee's Subcommittee on Commerce, Consumer Protection, and Competitiveness held two days of hearings on H.R. 1188 on Wednesday, March 3, 1993, in Washington, D.C., and Monday, April 26, 1993, in Chicago, Illinois.

On March 3, the Subcommittee heard testimony from William McNary, Legislative Director, Illinois Public Action; Ernestine Whiting, Board Member, Illinois ACORN; Selwyn Whitehead, President, Economic Empowerment Foundation; the Honorable Robert Willis, Superintendent of Insurance, District of Columbia; Lynn Schubert, Assistant General Counsel, American Insurance Association; and Mavis Walters, Executive Vice President, Insurance Services Office, Inc.

On April 26, the Subcommittee held a field hearing in Chicago and heard testimony from Robert Creamer, Executive Director, Illinois Public Action; Lilly Petty, Board Member, Illinois ACORN; Elce Redmond, Executive Director, Northwest Austin Council; James Morgan, President, Professional Insurance Agents and Brokers Association of Illinois; Michael Duncan, Vice President and Assistant General Counsel, Allstate Insurance Co.; and Thomas Weatherspoon, Executive Assistant-Agency, State Farm Mutual Auto Insurance Co.

Additional material was submitted for the record of both hearings.

COMMITTEE CONSIDERATION

On July 28, 1993, the Subcommittee on Commerce, Consumer Protection, and Competitiveness met in open session and ordered reported the bill H.R. 1188, as amended, by a voice vote, a quorum being present.

On September 14, 1993, the Committee met in open session and ordered reported the bill H.R. 1188 with amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been made by the Committee.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes the reported legislation will result in costs to the Federal government of approximately $3 million to $4 million a year for the first two years and $1 million to $3 million for the last three years.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 14, 1993.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1188, the Anti-Redlining in Insurance Disclosure Act, as ordered reported by the House Committee on Energy and Commerce on September 14, 1993. CBO estimates that implementation of H.R. 1188 would cost the federal government $3 million to $4 million annually in the first two years, and $1 million to $3 million annually in the following three years. Enactment of H.R. 1188 would result in no costs to state and local governments. Because enactment of H.R. 1188 would affect receipts, pay-as-you-go procedures would apply to the bill.

H.R. 1188 would require insurers designated by the Secretary of Commerce to provide certain information to the Department of Commerce (DOC) and to make such information available to the public. The DOC would be required to establish a pilot project to determine the need for further data collection. H.R. 1188 also would require the secretary to establish a task force on insurance agency appointments. It would establish civil penalities for violations by insurers of the reporting requirements of the bill. In addition, the bill would require the DOC to conduct several rulemaking procedures, conduct a number of studies, and produce various reports.

Based on information from the DOC, CBO expects that the agency would spend $3 million to $4 million in each of the first two years and $1 million to $3 million in each of the following three years to carry out its responsibilities under this bill. Most of the costs would be for staff involved in collecting and managing data and in preparing the required studies. The government also might receive additional income from fines levied against insurers that

violate the bill's reporting requirements, but we expect that any collections from such fines would be negligible.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are John Webb, who can be reached at 226–2860, and Melissa Sampson, who can be reached at 226–2720.

Sincerely,

JAMES L. BLUM,
(For Robert D. Reischauer, Director).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

The Committee believes this legislation will not have an appreciable inflationary effect.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section one provides the short title, "Anti Redlining in Insurance Disclosure Act".

Section 2. Findings and construction

Subsection (a) provides Congressional findings.

Subsection (b) provides that nothing in this Act is intended to, nor shall it be construed to, encourage unsound underwriting practices.

Section 3. Maintenance of information and public disclosure

In general, section 3 requires annual disclosure by insurance companies of property and casualty insurance practices and activities in urban areas, such as breakdowns of certain policies sold by five digit zip code. The information would be reported annually to the Secretary of Commerce, who would be required to make the information publicly available.

Subsection (a)(1) requires designated insurers to compile, submit to the Secretary of Commerce, and make available to the public, certain information on an annual basis for designated lines of insurance in designated MSA's (Metropolitan Statistical Areas or Consolidated Metropolitan Statistical Areas). This information would include, for a designated MSA, the total number of policies, the total exposure units (in car years and house years) and total earned premium of insurance policies by designated line which were issued by such insurer, along with the new written exposure units, the exposure units canceled, and exposure units not renewed by such insurer. In addition, designated insurers would also have to report the number of licensed agents in a designated MSA, broken down by 5-digit zip code within the MSA, along with information about the status of each agent (as an employee, an exclusive agent, or an independent agent).

Subsection (a)(2) requires non-designated insurers in a designated MSA to report annually the number of exposure units (in

car years and house years) of policies issued in each designated line of insurance, broken down by 5-digit zip code.

Subsection (b)(1) details information to be reported by designated insurers in compliance with subsection (a)(1). The information required by subsection (a)(1) shall disclose the number of policies, exposure units, and premium amount of policies for each line of insurance for which information is required, itemized by 5-digit zip code.

Subsection (b)(2) requires the information provided under subsection (a) to be made available to the public on a timetable determined by the Secretary, but no later than October 1 following the year for which such data was collected. The provision also requires that such information shall not be made available to the public until it is available in its entirety, but it shall be made available no later than October 1 or on the date determined by the Secretary even if not all the information required to be reported is available in its entirety.

Subsection (b)(3) requires the Secretary to implement subsection (a)(1) by establishing, by regulation, specifications for the collection and public reporting of specific information with respect to the following lines of insurance: private passenger automobile, homeowners, and dwelling fire and allied lines. The specifications would detail the reporting required by designated insurers in designated MSA's. The specifications shall: (1) provide that information be aggregated among similar policyholders and reported on that basis, (2) be designed to collect information with respect to the availability, cost, and type of insurance coverage between and among various geographic areas, (3) detail what data elements should be collected, (4) provided for the collection of information on an individual insurer basis, (5) minimize burdens on insurance agents, including independent insurance agents, (6) provide the data required by (2) with the least burden on insurers, particularly small insurers, (7) take into account the types of data collected under the Home Mortgage Disclosure Act, (8) take into account existing statistical reporting systems in the insurance industry, (9) require itemization by 5-digit zip code, and (10) include information on policies written in a residual market.

In developing the specifications under subsection (b)(3), the Secretary shall consult with (1) other Federal agencies with appropriate expertise, (2) State insurance regulators, (3) representatives of the insurance industry, including statistical agents, (4) representatives of insurance producers, including minority insurance producers, and (5) consumer, community, and civil rights groups, who are representative of a diversity of geographic locations.

The regulation under subsection (b)(3) shall be issued no later than 270 days after the date of enactment of this Act.

Subsection (b)(4) requires the Secretary to conduct a study and pilot project regarding the availability of commercial insurance.

In particular, subsection (b)(4)(A) requires the Secretary to conduct a study regarding the availability of commercial insurance (other than professional liability insurance, workers compensation insurance, and title insurance) with special emphasis on the availability of commercial insurance for small business. The study shall focus on an appropriate definition for small business, and prelimi-

nary views regarding the availability, cost, and type of insurance coverage for small business, which may be based on surveys of members of the small business community. In conducting the study, the Secretary shall consult with interested parties from a diversity of locations, including State insurance regulators, consumer, community, and civil rights groups, representatives of small business, representatives of the insurance industry, including statistical agents, and representatives of insurance producers, including minority insurance producers. The Secretary shall submit a report detailing the findings of the study to the House Energy and Commerce Committee and the appropriate Senate Committee no later than 18 months following the date of enactment.

Subsection (b)(4)(B) requires the Secretary, concurrent with the conduct of the study, to develop a proposed data collection pilot project in the five largest MSA's to help determine the need for any further data collection requirements to evaluate the availability, cost, and type of insurance coverage for small business. In developing the proposed pilot project, the Secretary shall consult with interested parties from a diversity of locations, including State insurance regulators, consumer, community, and civil rights groups, representatives of small business, representatives of the insurance industry, including statistical agents, and representatives of insurance producers, including minority insurance producers. The Secretary shall submit a specific proposal for a pilot project to the Committee on Energy and Commerce of the House of Representatives and the appropriate committee of the Senate no later than 18 months following the date of enactment.

Subsection (b)(4)(C) provides that, immediately following the submission of the proposal for a pilot project, the Secretary shall, by regulation, establish specifications for the collection and public reporting of information with respect to commercial insurance for the proposed pilot project. As part of the specifications, the Secretary shall designate the five largest MSA's for purposes of the pilot project. The specifications shall: (1) provide that information be aggregated among similar policyholders and reported on that basis; (2) be designed to collect information with respect to the availability, cost, and type of insurance coverage between and among various geographic areas; (3) provide for the collection of information on an individual insurer basis; (4) provide the data required with the least burden on insurers, particularly small insurers, and insurance agents, including independent insurance agents; (5) take into account existing statistical reporting systems in the insurance industry and use existing data sources to the maximum practical extent; (6) include information on policies written in a residual market; (7) detail what data elements should be collected; (8) detail what insurers should be designated insurers for purposes of the pilot project; (9) detail what lines of commercial insurance should be designated for purposes of the pilot project, with particular consideration given to commercial fire and business owners lines; (10) include an appropriate definition of small business, if necessary; (11) provide data representative of at least two years experience and provide that the pilot project will terminate no later than two years after its inception; and (12) provide adequate lead time to

designated insurers for the reporting to begin. The regulation shall be issued within two years of the date of enactment.

Subsection (b)(4)(D) requires the designated insurers to report to the Secretary with respect to the designated lines of commercial insurance in the five largest MSA's, pursuant to the regulation issued by the Secretary.

Subsection (b)(4)(E) requires the Secretary, at the conclusion of the pilot project, to analyze the data collected. Within one year of the conclusion of the pilot project, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the appropriate committee of the Senate on: (1) any conclusions of the Secretary regarding the data collected under the pilot project, particularly regarding the availability, cost, and type of commercial insurance for small business; and (2) the need for further data collection requirements to evaluate the availability, cost, and type of such coverage or to help ensure the availability of such coverage.

Subsection (b)(5) requires that the information shall be maintained and made available for a period of three years after the close of the first year during which the information is required to be reported.

Subsection (b)(6) requires the Secretary to prescribe a standard format for making the information available, which shall encourage the submission of the information in a computer readable form.

Subsection (b)(7) provides that the Secretary must exempt insurers operating in a state from the requirements of subsection (a) with respect to that State's portions of the designated MSA's, if the State has enacted a law or otherwise implemented an appropriate requirement. Such law or requirement must: (1) provide that the insurers in that state are subject to disclosure requirements on a 5-digit zip code basis substantially similar to those of subsection (a); (2) contain adequate provisions for enforcement; and (3) provide that the information disclosed under the state requirement is made available to the Secretary and the public in a manner similar to the other information disclosed under subsection (a). If the Secretary determines that the state law or requirement no longer meets the requisite criteria, or is no longer in effect, the Secretary is required to revoke the exemption.

Subsection (b)(7) also provides that insurance provided though a program administered or underwritten by the Federal government (Federal crime insurance and Federal flood insurance) would be exempt from the reporting requirement.

Subsection (c) requires the Secretary to implement a system to facilitate public access to the disclosed information, which shall include arrangements for a central depositary in each designated MSA and for a telephone number which can be used by the public to request information at cost. The Secretary is also required to make the information available in forms readable by personal computers. The Secretary may charge a fee for such information, equal to the cost of reproduction.

Subsection (d) requires the Secretary to develop regulations prescribing the format and method for insurers submitting the information required under subsection (a). Such regulations shall ensure uniformity among insurers, to the extent practicable, in the

format used for reporting, including the definition of data elements. Any reporting insurer may submit additional data or explanations as it deems relevant to its decision to sell insurance.

Section 4. Designation

Subsection (a) generally requires the Secretary of Commerce to designate the MSA's for which reporting is required, the insurers subject to reporting in each MSA, and the lines of insurance subject to reporting.

More specifically, subsection (a)(1) requires the Secretary to designate MSA's for which reporting is required—the 25 MSA's with the largest populations.

Subsection (a)(2) requires that, for each designated MSA, the Secretary shall designate the insurers for which reporting is required. First, the Secretary shall designate the 25 insurers in the designated MSA's having the largest premium volumes in the designated lines of insurance in each state in which the MSA is located.

The Secretary is also required to designate for reporting any entity primarily providing insurance in a designated line as part of a residual market insurance plan (such as a state joint underwriting association). The Secretary shall also designate insurers who specialize in selling insurance in urban areas, including surplus lines insurers.

In addition, the Secretary shall designate additional insurers such that insurers representing at least 80 percent of the premium volume in the designated line of insurance in each state in which such MSA is located are designated. However, the Secretary may not designate additional insurers under the last sentence if their market share in the designated line of insurance in the applicable states, as measured by premium volume in each state in which such MSA is located, is under one percent. The Secretary may, by regulation, designate additional insurers if the designation of additional insurers is necessary to provide valid data with respect to the availability, type and cost of insurance in a MSA.

Finally, the Secretary shall remove insurers from the list of designated insurers that were designated as part of the top 25 insurers, if any such insurers have a market share of under one percent in a designated line in such MSA, as measured by premium volume in each state in which the MSA is located. Under those circumstances, the Secretary shall remove those insurers from the list of designated insurers beginning with the insurer with the smallest market share, as long as the remaining designated insurers have a market share of at least 75 percent, as measured by premium volume in each state in which the MSA is located. In addition, the Secretary may remove any remaining insurers that were designated as part of the top 25 insurers and had under one percent market share, if such insurer primarily sells insurance in rural areas of the MSA.

Subsection (a)(2) also provides that for purposes of the designation of insurers, insurers which are affiliated or are members of the same group shall be considered together as one insurer.

Subsection (a)(3) specifies the designated lines of property and casualty insurance for which reporting is required under section 3.

These lines are private passenger automobile insurance, homeowners insurance, and dwelling fire and allied lines. The Committee notes that, for purposes of the reporting requirements of this legislation, private crop hail insurance underwritten and sold exclusively by private insurance companies is not included in dwelling fire and allied lines of insurance.

Subsection (a)(4) requires that the Secretary make the initial designations no later than July 1 of the year preceding the first year for which reporting is required. Such initial designation shall be effective for five years. Not later than July 15 of the year before the fifth year after a Secretarial designation, the Secretary shall make another designation to be effective at the end of the fifth year, for five years. The Secretary shall notify those involved in the designations no later than the July 15 which follows the designation.

Subsection (b) provides that the Secretary may obtain from insurers such information as the Secretary may require to make the designations.

Section 5. Task force on agency appointments

Subsection (a) requires the Secretary of Commerce to establish a task force on insurance agency appointments within 90 days of enactment. The task force shall consist of representatives of appropriate Federal agencies, property and casualty insurance agents (including specifically minority agents), property and casualty insurance companies, state insurance regulators, and public interest groups and shall have a significant representation from minority insurance agents. The task force shall be chaired by the Secretary or the Secretary's designee.

Subsection (b) details the functions of the task force. The task force shall: (1) review the problems inner city and minority agents may have in receiving appointments to represent property and casualty insurance companies; (2) review the practices of insurers in terminating agents and consider the effects such practices have on the availability or cost of insurance, especially in underserved areas; and (3) recommend solutions to improve the ability of inner city and minority insurance agents to market property and casualty insurance products, including steps property and casualty insurance companies should take to increase their appointments of such agents.

Subsection (c) requires the task force to report its findings and recommendations to the House Committee on Energy and Commerce and the appropriate Senate Committee within two years after the date of enactment. The task force shall terminate when the report is submitted.

Section 6. Implementation

Subsection (a) requires the Secretary of Commerce to prescribe such regulations as may be necessary to carry out section 3. Such regulations would be promulgated under the Administrative Procedure Act.

Subsection (b) allows the Secretary to contract with a data collection contractor to carry out the Secretary's responsibilities under section 3 if the contractor agrees to collect and make available the

data pursuant to the terms and conditions of that section. A statistical agent may also be a data contractor.

Subsection (c) allows for the use of statistical agents, acting on behalf of multiple insurers, to report the required data. The Secretary (and, if applicable, the data collection contractor) may accept data reported by a statistical agent if: (1) the statistical plan used by the statistical agent for the reporting of data on insurance provides for the reporting of data in a manner compatible with section 3(a); (2) the statistical agent reports such data on an individual insurer basis and, at the discretion of the Secretary, on an aggregate basis; (3) the statistical agent provides adequate procedures to protect the integrity of the data reported; (4) the statistical agent has procedures in place which ensure that data reported under the statistical plan in connection with reporting under this Act and submitted to the Secretary are not subject to adjustment by the statistical agent or insurer for reasons other than technical accuracy and conformance to the statistical plan; (5) the statistical agent ensures that the data of one insurer is not subject to review by other insurers before public availability; and (6) the statistical agent provides for the reporting of data in a manner compatible with the format prescribed by the Secretary. The Secretary may, after providing an opportunity for a hearing, discontinue accepting data from a statistical agent if the Secretary determines the requirements for acceptance of such data are no longer met.

Subsection (d) provides for an auditing role for the General Accounting Office. The Comptroller General is given the authority to review and audit any data collection and reporting performed under section 3, whether by the Secretary, the data collection contractor, or a statistical agent, to ensure that the integrity of the data collected and reported is protected.

Subsection (e) directs the Secretary, in prescribing regulations under this Act, to take into consideration the burdens on insurance agents, including independent agents, in complying with the requirements of this legislation and to minimize those burdens on such agents.

Section 7. Relation to State laws

Section 7 provides that this Act does not annul, alter, affect, or exempt the obligation of any insurer subject to this Act to comply with the laws of any State or subdivision thereof with respect to public disclosure and recordkeeping.

Section 8. Compilation of aggregate data

Subsection (a) requires the Secretary of Commerce to annually compile, for each MSA, aggregate data by 5-digit zip code, including tables showing insurance policies aggregated for various categories of zip codes grouped according to location, age of property, income level, and racial characteristics of neighborhoods.

Subsection (b) provides that statistical agents may aggregate the data of insurers that report to them and may provide such information to the Secretary. The Secretary may also provide the individual company data submitted by insurers to statistical agents for aggregation.

Subsection (c) requires the data and tables produced pursuant to subsection (a) to be made available to the public on a timetable determined by the Secretary, but not later than October 1 of the following year.

Section 9. Enforcement

Subsection (a) provides that any insurer who is determined by the Secretary, after providing opportunity for a hearing on the record, to have violated the requirements of section 3 shall be subject to a civil penalty of not to exceed $5,000 for each day during which such violation continues.

Subsection (b) provides that the Secretary may bring an action in an appropriate United States district court for appropriate declaratory and injunctive relief against any insurer who violates the requirements of section 3.

Subsection (c) provides that an insurer shall be responsible under subsections (a) and (b) for any violation of a statistical agent acting on behalf of the insurer.

Section 10. Sunset

Subsection (a) provides that, except as provided in subsection (b), this Act shall not be in effect after the expiration of five years from its effective date. Prior to the expiration of four years from the effective date, the Secretary shall report to the House Energy and Commerce Committee and the appropriate Senate Committee regarding: (1) the quality of data received under section 3 and the effectiveness of the data requirement, including the relation between the cost of such data gathering and the benefits from having such data available, (2) the appropriateness of the geographic data reporting units, (3) the need for continued reporting by the designated insurers in urban areas, (4) the efforts of insurers to meet the insurance needs of minority and low-income neighborhoods, and (5) such other information as the Secretary determines will assist in considering an extension of this Act.

Subsection (b) provides that, based on the Secretary's report on the need for continued reporting and the other information the Secretary determines will assist in the consideration of an extension, the Secretary may extend this Act for one period of two years.

Section 11. Studies

Subsection (a) requires the Secretary to conduct a study of information on insurance applicants. In particular, the Secretary is required to conduct a study to determine the feasibility and utility of the collection of information with respect to the characteristics of applicants for insurance and reasons for rejection of applicants. The Secretary shall report the results of the study to the House Committee on Energy and Commerce and the appropriate Senate Committee within 18 months of the date of enactment.

Subsection (b) requires the Secretary to study insurer actions to meet the insurance needs of certain neighborhoods. In particular, the Secretary shall study various practices, actions, programs, and methods undertaken by insurers to meet the property and casualty insurance needs of residents of low- and moderate-income neighborhoods, minority neighborhoods, and small businesses located in

such neighborhoods. The Secretary may establish a task force of interested parties, including representatives of insurance companies, insurance agents, including minority insurance agents, and consumer representatives to discuss additional practices, actions, programs, and methods to meet these needs. The Secretary shall report the results of the study, including any recommendations, to the House Committee on Energy and Commerce and the appropriate Senate Committee no later than two years after enactment.

Section 12. Definitions

Section 12 defines terms used in the legislation, including "commercial insurance", "designated insurer", "designated line", "exposure units", "insurer", "MSA", "property and casualty insurance", "residual market", "Secretary", and "State".

Section 13. Effective date

Section 13 provides that the requirements of this Act take effect with respect to information on insurance described in section 3 and developed in and after calendar year 1995.

ADDITIONAL VIEWS OF HON. CARDISS COLLINS

I support H.R. 1188, the Anti Redlining in Insurance Disclosure Act, which I introduced on March 3. It will provide a significant amount of data on insurance availability that is simply not publicly available today—data that will help determine the true nature and extent of redlining.

More specifically, this legislation will require insurance companies to disclose information about their insurance practices and activities in the 25 largest urban areas. These disclosure requirements would apply to major lines of insurance, such as automobile and property insurance. The legislation also requires reporting of agent location. The information generated by this legislation would help determine the true nature and extent of redlining. The public disclosure of this information would also serve as a powerful disincentive against discriminatory behavior. The Act would be administered by the Department of Commerce.

However, I must note my strong disappointment at certain changes that were adopted at the Subcommittee markup on July 28.

For example, the bill was amended to require information to be collected by five-digit zip code, instead of by census tract. Census tracts are smaller and more homogenous than zip codes and are a far preferable unit for collecting information on insurance availability, particularly considering the wealth of demographic data availability on a census tract basis.

The bill was also amended to provide for sunset after five years, with the Secretary of Commerce given the ability to extend the Act for an additional two years. It is important to note that the collection of data about insurance availability serves several purposes. First, the information is essential to a better understanding of the nature and extent of redlining. But also, such disclosure can serve as a disincentive to redlining and discriminatory behavior. I would like to think that all discriminatory behavior will disappear after five or seven years, but I am afraid that would be overly optimistic.

Among the other changes which caused me concern were the reduction in the number of metropolitan areas designated for data collection from 150 to 25 and the deletion of the requirement to provide loss or claims information. In addition, the Subcommittee deleted the requirement to collect information about commercial insurance. I was pleased that the full Committee adopted my amendment to partially restore this important provision by establishing a pilot project for the collection of information on commercial insurance in the five large metropolitan areas, including Chicago.

Even as amended, this legislation is still an important step towards ending redlining. There will be further opportunities to improve the bill as the legislative process goes forward.

CARDISS COLLINS.

ADDITIONAL VIEWS OF HON. GARY A. FRANKS

I am filing these views to ensure that the record accurately reflects my support for H.R. 1188, the Anti-Redlining in Insurance Disclosure Act. I was an original cosponsor of the legislation and supported its passage. I also supported Chairwoman Collins' amendment creating a pilot program to collect data on commercial insurance.

GARY A. FRANKS.

MINORITY VIEWS

As amended, H.R. 1188, the Anti-Redlining in Insurance Disclosure Act, is a substantially better legislative product than the original version of the bill. However, we continue to object because this bill will impose expensive new reporting requirements on both insurance companies and the Federal government without a sufficient record showing that a project of this magnitude is required. A stronger record must be developed before Federal action of this magnitude is warranted.

I. WHAT IS REDLINING?

In the two hearings held by the Subcommittee on the issue, a conclusive definition of "redlining" was never developed. Ms. Ernestine Whitting representing the Association of Community Organizations for Reform Now (ACORN) testified that ACORN defined redlining as: "the industry practice of refusing to write policies, charging differential rates, offering substandard coverage, discouraging applications, or imposing differential requirements as a condition of coverage based on the geographic location of a property or individual seeking coverage."

The National Association of Insurance Commissioners (NAIC) defines redlining more precisely. In the NAIC Model Unfair Trade Practices Act, the definition of redlining is: "making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless such action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience."

These are two very different perspectives on the issue of redlining. The NAIC's definition looks at whether different applicants or policy holders are discriminated against; ACORN's looks at whether different applicants or policy holders are treated differently. The NAIC clearly excludes rate-making as a criteria while ACORN's definition suggests that differences in rates between geographic areas could be interpreted as redlining. The NAIC emphasizes an insurer's ability to utilize whatever applicable underwriting principles that might be necessary while ACORN leaves that question open. Perhaps most importantly, the NAIC explains the kind of discrimination that could constitute redlining—discrimination between individual risks of essentially the same hazard—while ACORN does not make any such distinction.

These two definitions represent the ends of the spectrum of definitions presented to the Subcommittee. All of the definitions deal with the issue of discrimination, but only a few make the distinction between discrimination based on risk, more commonly called

underwriting, and those that discriminate on other, non-risk based factors. For instance, there is always the possibility that an insurance company may not be selling insurance in a particular geographic area simply because they are not marketing it correctly. In this debate, people often forget that insurance companies are just as capable of poor marketing decisions as any other kind of business. Some witnesses claimed that the practice of redlining is extremely subtle. If that is indeed the case, then the distinction between what constitutes redlining and what constitutes other legitimate behavior is extremely important if we are to distinguish the truly bad actors from those who are engaging in the legitimate underwriting of risks.

Unfortunately, H.R. 1188 does not make those distinctions. It neither defines redlining nor provides any direction for the use of the data once it is collected. The operating definition of redlining that would result is similar to Supreme Court Justice Potter Stewart's famous definition of obscenity: "I know it when I see it."

Because of the ambiguity of the definition of redlining, we see a potential for the misuse of the data collected under H.R. 1188. It would be possible to misinterpret the data to suggest that certain companies might be "redlining" certain areas when they either have a poor risk history in a certain area or just are not doing a very good job of marketing. We are concerned that the data collected under this legislation could be used to involve insurance companies in costly legal battles defending every marketing and underwriting decision they make in the inner-city, all without a clear definition of what behavior is and is not legal.

II. STUDIES SUBMITTED TO THE SUBCOMMITTEE AND THE LEGISLATIVE RECORD

In the legislative process, the purpose of the hearing is to develop a record that conclusively proves the need for the legislation being considered. The centerpieces of the hearings held by the Subcommittee were several studies of insurance redlining conducted by outside groups. These groups submitted their studies for the Subcommittee's consideration before, during, and after the hearings. Most of these studies were intended to prove that redlining is a major problem in the cities studied and there was a need for further government study to decide if redlining was a problem nationwide.

Of the three major studies submitted to the Subcommittee, none of them was completely without problems. At best, these studies could only offer descriptions of the degree to which certain neighborhoods were served by insurance companies, not the reasons why certain neighborhoods might be underserved; at worst, they did not provide accurate descriptions of coverage in those neighborhoods at all.

ACORN

ACORN formally submitted its February 5, 1993 report entitled "A Policy of Discrimination? Homeowners Insurance Redlining in 14 Cities" to the Subcommittee at its March 3, 1993 hearing on insurance redlining. The purpose of the study, as stated by its authors, was to "assess whether there are disparities in the level,

quality, and price of homeowners' insurance coverage based on the income and racial composition of neighborhoods." They further attempted to assess the degree to which insurance agents treat individuals seeking insurance from low-income areas and minority groups differently from their white counterparts in more affluent areas. They analyzed coverage information collected by states on a zip code basis in five cities to figure out if areas were underserved. ACORN also conducted test calls in 13 cities to determine if minorities were routinely being denied insurance coverage. Their findings, highlighted in the press release and summary accompanying the report, concluded that "millions of hardworking Americans are being denied access to homeowners insurance simply because of where they live."

Unfortunately, this conclusion does not seem to correspond to the information contained in their report. ACORN's report contains no specific instance where an individual was refused insurance based upon the neighborhood in which they lived. There were instances in which individuals were refused quotes over the phone, but it is important to note that a refusal to give an estimate does not equal a refusal to underwrite.

Further, ACORN's examination of zip-code data on coverage of single-family homes did find disparities on the level of coverage in minority and low-income neighborhoods and that of white and high-income neighborhoods. However, the quality of the data used by ACORN is itself questionable and the sample sizes analyzed are far smaller than in common practice in public policy and other similar statistical research. Problems, such as a failure to account for rental properties, unreliable counts on the number of policies sold, and an inability to compare the data from city to city, plague the ACORN report. Particularly troubling was ACORN's omission of statistical tests which would have indicated the reliability of the correlations described in their report.

ACORN has had the opportunity to answer methodological questions about its study both on and off the record. Unfortunately, their responses have not been adequate, and hence, significant questions remain. Even in the best light, the reliability of ACORN's data must be considered questionable and the validity of their conclusions should be doubted.

Illinois public action

Illinois Public Action (IPAC) conducted a study of the location of insurance agents in inner-city Chicago. They compared the number of agents located in predominantly white areas of Chicago to the number of agents located in areas with predominantly minority populations. They found that "the distribution of these offices clearly reveals that auto insurance coverage by the largest carriers is not being uniformly marketed in Chicago neighborhoods." In a later study based upon data submitted by Allstate and State Farm to the Subcommittee, entitled "An Analysis of Zip Code Distribution of State Farm and Allstate Agents and Policies in Chicago," IPAC found that "the marketing of policies is closely correlated with the geographic distribution of agents and offices; . . . and that this uneven distribution of agents and policies largely reflects the racial and income make-up of those communities."

Unfortunately, IPAC's study serves as a perfect illustration of the problems associated with the lack of a coherent definition of redlining. IPAC assumes that because different geographic areas vary with respect to the number of policies in place from the large insurance companies and their composition, and there is some superficial correlation between the two variables, there is conclusive evidence of racial discrimination and redlining. In a response to IPAC's allegations, State Farm perhaps best summed up the flaw in the logic of the IPAC supposition:

> Under the IPAC analysis and criteria, all sorts of ordinary business activities would be suspect. For example, what if it were shown that the postal service delivers less mail or that attorneys have fewer offices in minority areas than in non-minority areas? * * * Each of these examples could be explained by the ordinary operation of economic or social forces unrelated to racial considerations. Perhaps fewer letters were mailed to certain areas or, perhaps attorney offices are located for convenient access to the courts.

Even if this major flaw in logic were set aside, the IPAC study suffers from the same methodological faults as the ACORN study; namely it fails to follow commonly accepted practices in the academic and public policy community for analyzing statistical data. While IPAC asserts a correlation between the number of policies in a particular zip code and the racial and income characteristics of that zip code, they fail to include any of the commonly used statistical tests or control for outside variables. This is regrettable because these are vital steps in any legitimate quest for accurate results. These methodological and logical inconsistencies place the accuracy of the IPAC findings in doubt.

American insurance association

Finally, a third study was submitted to the Subcommittee staff after the hearings by the American Insurance Association (AIA). "Availability and Use of Homeowners Insurance in the Urban Core of Major American Cities" was commissioned by the AIA and attempted to replicate a 1980 survey conducted by the All-Industry Research Advisory Council (now the Insurance Research Council). The AIA study consisted of a survey of homeowners, randomly sampled from the so-called "urban cores" of six major American cities. The cities, Atlanta, Chicago, Cleveland, Los Angeles, Philadelphia, and the borough of Brooklyn within New York City, were selected to be as representative of the nation's cities as possible, representing a variety of demographic and regional characteristics. The sample of households was designed to insure adequate representation of low- and moderate-income households and 250 or more interviews were conducted in each city.

AIA concluded that, when combined with the results of previous surveys by AIA and the All-Industry Research Advisory Council, their study "conclusively demonstrate[d] that property insurance is widely available in each city surveyed, and that such coverage is "very easy" or "somewhat easy" to obtain for the vast majority of policyholders. During the past five years, few respondents have

been turned down for any type of homeowners coverage, and an even smaller percentage have had their coverage canceled or non-renewed for any reason."

Their study found little difference between the experiences of minority and white homeowners in obtaining property insurance. Further, only 3 percent of the total respondents said that they were aware of anyone in their neighborhood having difficulty in obtaining such insurance.

Critics of the AIA study have charged that it only examines homeowners and, thus, does not include households that have been unable to purchase a home because they could not obtain insurance. That is a valid criticism and AIA recognizes that this is a limitation of their study. However, the AIA data suggest that homeowners in the urban cores of major American cities are obtaining property insurance, and doing so without a great deal of difficulty. The AIA study does not eliminate the possibility of an under-supply of property insurance, but it appears to dispel assertions that the insurance industry is engaging in a policy of wholesale discrimination against inner-city poor and minority communities.

On a methodological note, it is important to recognize that the AIA study was the only one of the three major studies submitted to the Subcommittee that fully disclosed weighting and sample reliability statistics consistent with accepted practices in the survey research community. Even within the study's acknowledged limitations, this simple fact gives their findings added credibility.

With the submission of these three studies, the evidence demonstrating widespread redlining is of dubious consequence. We believe that the record needs to be developed further. None of the studies submitted thus far warrant the effort and expense that would have to be undertaken by both insurance companies and the Federal government to carry out the requirements of H.R. 1188.

III. THE SCOPE OF THE DATA COLLECTED UNDER H.R. 1188

During consideration of this legislation, a great deal of time was spend by both staff and members discussing the scope of the data to be collected under H.R. 1188. In deciding the scope of the data collected, it is necessary to determine why the data is being collected. We believe that, even if the premises of the ACORN and IPAC studies were considered as accurate, no data collection effort can prove beyond a doubt that insurance companies engage in redlining. Rather, the most that could be inferred from data collection in this area is the degree to which the nation's inner-cities might be underserved by traditional property/casualty insurance companies. No study, no matter how broadly defined, could conclusively determine the reasons why a particular area is underserved.

Given that fact, we believe that, if the Congress believes that the government must go forward and collect the data requested under H.R. 1188, the data should be collected in the most efficient manner possible and at the lowest possible cost to both the government and insurance companies. This would necessarily include eliminating the collection of any variables that could be considered extraneous to the determination of the degree to which a city might be underserved, also limiting the number of data points collected. In

simpler terms, this means that only the variables absolutely necessary to determining whether inner-cities are underserved should be collected, and they should only be collected from a sample of the insurance companies in a sample of cities. This is the purpose of sampling—to use enough representative data points to extrapolate out to the universe of possibilities. This information would enable the Congress to consider the extent of the problem and determine whether further Federal intervention is necessary.

To this end, H.R. 1188 was substantially improved at the Subcommittee markup. The Slattery Amendment significantly pared back the scope of the Subcommittee Print and focused the efforts of the Department of Commerce on the issue of whether our inner-cities are underserved by insurance companies. First, the Slattery Amendment changed the reporting unit from census-tracts to zip codes. This was a substantial improvement since it was recognized that a census tract reporting requirement, no matter how it was sugar-coated, would have high implementation costs either for the government, for insurance companies, or both.

Secondly, the Slattery Amendment reduced the number of metropolitan statistical areas (MSA's) required to report the required information from 150 to 25. We believe that this is an important step in confining the study to the problems described in the hearings. In the original bill, insurance companies in communities as small as Ocala, Florida and Johnstown, Pennsylvania would have been required to undertake the same costly reporting procedures as insurance companies in major cities like New York and Chicago. This reduction in the number of MSA's required to report makes particular sense given the ambiguity of the problem. Although critics argue that a study of only the 25 largest MSA's is too small to be effective, the top 25 MSA's contain roughly 58 percent of the nation's population. We believe that collecting insurance data on almost two-thirds of the nation's population is more than adequate for any study of redlining.

The amendment also included a 5-year sunset provision, but provided for an opportunity for the Secretary to extend the data collection for another two years. We applaud the inclusion of the sunset provision. If this program is supposed to be a study, there is no reason why it should continue on in perpetuity. Further, this bill contains no authorization for appropriations. Since the Department of Commerce would not need to seek to have this program reauthorized before it could receive further appropriations, it very well could continue collecting data well into eternity if it were not for the sunset provision. As important as the sunset provision is in itself, we are concerned about the mechanism used to bring about an end to the program.

Under the normal authorization cycle, a program is authorized at a specific funding level for a set time period. At the end of that time period, an agency must return to the Congress to seek an extension of the program. The Congress must take an affirmative action and renew the authorization or the program will die. However, H.R. 1188 as amended by the Subcommittee permits the Secretary of Commerce, an unelected official, to arbitrarily extend the collection of data for an additional two years without returning to the Congress for so much as an oversight hearing. We believe discre-

tion is neither warranted nor necessary. If the Committee wants the study to be five years in length, then it should authorize and fund it for five years; if it wants it to be seven years in length, it should authorize and fund it for that amount of time. No matter what decision the Committee eventually comes to, it should not indiscriminately delegate this authority to appointed officials of the Executive Branch. To do so belittles our responsibility as the authorizing Committee to periodically review the programs that we authorize.

The amendment also dealt with the collection of commercial data. It replaced a requirement that the Secretary eventually begin collecting that data with a provision requiring the Secretary to study the feasibility of collecting commercial insurance data with an emphasis on small business insurance. While there is a pilot study of commercial insurance supported by certain members of the insurance industry and the Majority, we are extremely concerned about attempts to again require mandatory reporting. What was true at the Subcommittee markup is still true—there is little in the hearing record to justify any kind of reporting regime for commercial insurance.

During the two hearings held on H.R. 1188, only one consumer witness testified on the subject of availability problems with respect to commercial and small business insurance. Because commercial and small business insurance were never believed to be within the scope of the hearings, there was no industry testimony on the subject. Commercial and small business insurance is recognized as a more complex, less standardized product than personal lines insurance and would place even greater burdens on insurance companies, even in the case of a limited study. We cannot support attempts to create a mandatory scheme for collecting this data until at least the Subcommittee has had a hearing dedicated to the subject and the costs and the benefits were clearly evaluated.

The bill was improved in other areas as well. The requirements that insurance companies submit policyholder specific information and loss data were deleted, and small, rural insurance companies were protected against being forced to report the information required in the bill. In short, the amendments adopted at the Subcommittee markup narrowed the breadth of the information collected and more narrowly focused the study on the issue examined in the hearings—redlining in the nation's inner-cities.

We believe that all of these improvements are necessary to begin to control the costs, uses, and effects of this study. We would strongly oppose attempts to retreat from these positions at later stages of the legislative process.

III. THE COSTS OF IMPLEMENTING H.R. 1188

As noted previously, we have strong concerns about the costs of H.R. 1188 that will be imposed on the Federal government. Also important are the costs imposed on insurance companies since these costs will inevitably be passed on to policyholders. We believe that the costs of implementing H.R. 1188 will be substantial and, in light of the inadequate hearing record, difficult to justify.

Initial estimates from the Department of Commerce and the Congressional Budget Office (CBO) indicate that it will cost between $3

million and $4 million annually to carry out the provisions of H.R. 1188. While the sunset provision eliminates the need for the establishment of a permanant Federal bureaucracy, the Department of Commerce assumes that it will rely upon the States to actually gather the data, but would keep most of the dissemination functions within the Department. At a minimum, the Department of Commerce estimates that tabulating and disseminating this data would cost $512,000 a year, or a total of $2.56 million, assuming the data gathering continues for only five years. However, they also estimate that there is the possibility that it could cost as much as $1.84 million per year, for a total five year cost of $9.2 million.

While these costs may seem nominal to some, we do not share that view. In an era of $300 billion deficits, we need to watch every penny we spend. When we are borrowing almost a billion dollars a day, new programs such as this one face a much higher burden of proof—a burden we feel this legislation does not meet.

IV. CONCLUSIONS

Throughout the consideration of this legislation, the Minority and Majority have had major differences over the substantive issues involved in the legislation. Everyone, regardless of party, has worked to eliminate differences and develop the best legislation possible. This was a worthwhile effort and H.R. 1188 is all the better for it. Notwithstanding any of the problems that this bill could create in the future, we are confronted with the single basic fact that has disturbed us from the beginning: the evidence simply does not justify the expenditures and efforts required to carry out this legislation.

The problems with the studies, combined with the a failure to adequately identify a definition for redlining, simply give credence to this fact. Some would argue that, in the ovrall scheme of Federal funding, the costs of this bill amount to little more than pocket change and we should ignore the problems with the evidence presented. This approach ignores the fundamental fact that, as Members of Congress, it is incumbent upon us to very carefully decide how the taxpayers' money should be spent, particularly given the size of our annual deficit.

CARLOS J. MOORHEAD.
THOMAS J. BLILEY.
JACK FIELDS.
MICHAEL G. OXLEY.
MICHAEL BILIRAKIS.
DAN SCHAEFER.
JOE BARTON.
ALEX MCMILLAN.
J. DENNIS HASTERT.
CLIFF STEARNS.
BILL PAXON.
JAMES C. GREENWOOD.
MICHAEL D. CRAPO.

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Union Calendar No. 151

103D CONGRESS *1st Session*	HOUSE OF REPRESENTATIVES	REPORT 103–271

REPORT

ON THE

REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1994

SUBMITTED BY MR. NATCHER, CHAIRMAN, COMMITTEE ON APPROPRIATIONS

SEPTEMBER 30, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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FREDERICK G. MOHRMAN, *Clerk and Staff Director*

LETTER OF SUBMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, September 30, 1993.

Hon. THOMAS S. FOLEY,
The Speaker, U.S. House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Appropriations, I submit herewith the Committee's report on revised subdivision of budget authority and outlays for fiscal year 1994 pursuant to section 302(e) of the Congressional Budget Act of 1974, as amended, which was ordered reported by the Committee on September 28, 1993.

This revised subdivision is necessary to proceed to conference on the 1994 appropriations bills.

The following subdivision is consistent in all instances with the Budget Resolution.

Sincerely,

WILLIAM H. NATCHER,
Chairman.

Union Calendar No. 151

103D CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT 103–271

REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS FOR FISCAL YEAR 1994

SEPTEMBER 30, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NATCHER, from the Committee on Appropriations, submitted the following

REPORT

REPORT ON THE REVISED SUBDIVISION OF BUDGET TOTALS

The Committee on Appropriations submits the following report on the revised subdivision of budget totals for fiscal year 1994 pursuant to section 602(b)(1) and section 302(e) of the Congressional Budget Act of 1974, as amended.

REVISED SUBDIVISION TO SUBCOMMITTEES, FISCAL YEAR 1994; BUDGET AUTHORITY AND OUTLAYS

[In millions of dollars]

Subcommittee	Budget authority	Outlays
Agriculture, Rural Development, Food and Drug Administration:		
Discretionary	14,819	14,317
Mandatory	44,482	34,822
Total Agriculture, Rural Development, Food and Drug Administration	59,301	49,139
Commerce-Justice-State-Judiciary:		
Discretionary	23,119	23,231
Mandatory	561	547
Total Commerce-Justice-State-Judiciary	23,680	23,778
Defense:		
Discretionary	240,446	255,465
Mandatory	180	180
Total Defense	240,626	255,645
District of Columbia:		
Discretionary	700	698
Mandatory		
Total District of Columbia	700	698
Energy and Water Development:		
Discretionary	22,017	21,702
Mandatory		
Total Energy and Water Development	22,017	21,702
Foreign Operations:		
Discretionary	13,444	13,918
Mandatory	44	44
Total Foreign Operations	13,488	13,962
Interior:		
Discretionary	13,736	13,731
Mandatory	96	96
Total Interior	13,832	13,827
Labor, Health and Human Services, and Education:		
Discretionary	67,283	68,140
Mandatory	195,981	195,183
Total Labor, Health and Human Services, and Education	263,264	263,323
Legislative:		
Discretionary	2,270	2,267
Mandatory	92	92
Total Legislative	2,362	2,359
Military Construction:		
Discretionary	10,066	8,784
Mandatory		
Total Military Construction	10,066	8,784

REVISED SUBDIVISION TO SUBCOMMITTEES, FISCAL YEAR 1994; BUDGET AUTHORITY AND OUTLAYS—Continued

[In millions of dollars]

Subcommittee	Budget authority	Outlays
Transportation:		
Discretionary	13,284	34,889
Mandatory	589	592
Total Transportation	13,873	35,481
Treasury-Postal Service:		
Discretionary	11,469	11,642
Mandatory	11,483	11,482
Total Treasury-Postal Service	22,952	23,124
VA-HUD-Independent Agencies:		
Discretionary	68,311	69,973
Mandatory	18,642	20,266
Total VA-HUD-Independent Agencies	86,953	90,239
Grand Total:		
Discretionary	500,964	538,757
Mandatory	272,150	263,304
Total	773,114	802,061

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103D CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 103–272

ORGAN AND BONE MARROW TRANSPLANTATION AMENDMENTS OF 1993

SEPTEMBER 30, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2659]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2659) to amend the Public Health Service Act to revise and extend programs relating to the transplantation of organs and of bone marrow, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Organ and Bone Marrow Transplantation Amendments of 1993".

SEC. 2. ORGAN PROCUREMENT ORGANIZATIONS.

(a) IN GENERAL.—Section 371(a) of the Public Health Service Act (42 U.S.C. 273(a)) is amended—

(1) by striking paragraphs (2) and (3); and

(2) by inserting after paragraph (1) the following paragraph:

"(2)(A) The Secretary may make grants to, and enter into contracts with, qualified organ procurement organizations described in subsection (b) and other public or nonprofit private entities for the purpose of—

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"(i) planning and conducting programs to provide information and education to the public on the need for organ donations; and

"(ii) training individuals in requesting such donations.

"(B) In making awards of grants and contracts under subparagraph (A), the Secretary shall give priority to carrying out the purpose described in such subparagraph with respect to minority populations.".

(b) REQUIREMENTS REGARDING QUALIFIED ORGAN PROCUREMENT ORGANIZATIONS.—Section 371(b) of the Public Health Service Act (42 U.S.C. 273(b)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A)—

(i) by striking "organization for which grants may be made under subsection (a) is" and inserting "organization described in this subsection is"; and

(ii) by striking "paragraph (2)" and inserting "paragraph (3)";

(B) in subparagraph (E), by moving the subparagraph 2 ems to the left; and

(C) in subparagraph (G)—

(i) in the matter preceding clause (i), by striking "has a board of directors or an advisory board which" and inserting the following: "has a board of directors (or an advisory board, in the case of a hospital-based organization) which"; and

(ii) in clause (i)(II), by striking "members" and all that follows and inserting the following: "individuals who have received a transplant of an organ, individuals who are part of the family of an individual who has donated an organ, and individuals who have been medically referred to receive a transplant of an organ (or individuals who are part of the family of individuals who have been so referred), which individuals shall in the aggregate constitute not less than ⅓ of the membership of the board and which members shall, to the extent practicable, be residents of the service area involved,"; and

(2) in paragraph (3)—

(A) in subparagraph (A), by amending the subparagraph to read as follows:

"(A)(i) With respect to each hospital or other entity in its service area that has facilities for organ donations, the organization shall have an effective agreement with the entity under which the entity identifies potential organ donors and notifies the organization, subject to clause (ii).

"(ii) The Secretary may waive the requirement of clause (i) to the extent determined by the Secretary to be necessary to promote organ donation and the equitable allocation of organs.";

(B)(i) in the matter preceding subparagraph (A), by striking "shall—" and inserting "shall comply with the following:";

(ii) in each of subparagraphs (B) through (K), by inserting "The organization shall" before the first word of the subparagraph;

(iii) in each of subparagraphs (B) through (I), by striking the comma at the end and inserting a period; and

(iv) in subparagraph (J), by striking ", and" and inserting a period;

(C) in subparagraph (E)—

(i) by inserting "(i)" after the subparagraph designation; and

(ii) by adding at the end the following clauses:

"(ii) The organization shall, subject to clause (iii), ensure that the system under clause (i) allocates each type of organ on the basis of a single list, maintained exclusively by the organization, of individuals who have been medically referred to a transplant center in the service area of the organization in order to receive a transplant of the type of organ with respect to which the list is maintained, and who are citizens or permanent resident aliens of the United States.

"(iii) Upon the request of the organization, the Secretary may, with respect to the service area of the organization, waive the requirement of clause (ii) regarding a single list if the Secretary determines that the waiver is necessary to ensure the equitable allocation of organs of the type involved and maximize the opportunities for successful outcomes of transplants of such organs."; and

(D) in subparagraph (H), by striking "participate" and all that follows through "372" and inserting the following: "be a member of, and abide by the rules and requirements of, the Organ Procurement and Transplantation Network established under section 372".

SEC. 3. ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK.

Section 372(b) of the Public Health Service Act (42 U.S.C. 274(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking "and" after the comma at the end; and

(B) by striking subparagraph (B) and inserting the following subparagraphs:

"(B) have a board of directors composed of not more than 32 members, whose membership includes—

"(i) representatives of organ procurement organizations, transplant centers, and voluntary health associations; and

"(ii) individuals who have received a transplant of an organ, individuals who are part of the family of an individual who has donated an organ, and individuals who have been medically referred to receive a transplant of an organ (or individuals who are part of the family of individuals who have been so referred), which individuals shall in the aggregate constitute not less than ⅓ of the membership of the board; and

"(C) establish, through such board of directors, an executive committee and other committees, the chairs of which shall be selected to ensure continuity of leadership for the board."; and

(2) in paragraph (2)—

(A) by striking "shall—" in the matter preceding subparagraph (A) and all that follows through the end of clause (i) of such subparagraph and inserting the following: "shall—

"(A) establish (in one location or through regional centers)—

"(i) with respect to each type of organ—

"(I) a national list of individuals who have been medically referred to receive a transplant of the type of organ with respect to which the list is maintained and who are citizens or permanent resident aliens of the United States (which list shall include the names of all individuals included on lists in effect under section 371(b)(3)(E)), and

"(II) a national list of individuals who have been so referred and who are in the United States but are not such citizens or such aliens, and"; and

(B)(i) in subparagraph (J), by striking "and" after the comma at the end;

(ii) in subparagraph (K), by striking the period at the end and inserting a comma;

(iii) in subparagraph (L), by striking the period at the end and inserting a comma; and

(iv) by adding at the end the following subparagraphs:

"(M) establish the condition that, with respect to the type of organ involved, the list under subclause (II) of subparagraph (A)(i) may be considered in allocating an organ only if no individual on the list under subclause (I) of such subparagraph is a medically appropriate recipient for the organ,

"(N) submit to the Secretary for review and approval any change in the amount of fees imposed by the Network for the registration of individuals on the lists maintained under subparagraph (A)(i) (which change is deemed to be approved if the Secretary does not provide otherwise before the expiration of the 30-day period beginning on the date on which the change is submitted to the Secretary),

"(O) make available to the Secretary such information, books, and records regarding the Network as the Secretary may require, and

"(P) meet such criteria regarding compliance with this part as the Secretary may establish.".

SEC. 4. NATIONAL BONE MARROW DONOR REGISTRY.

(a) IN GENERAL.—

(1) TRANSFER OF PROGRAM.—Section 379(a) of the Public Health Service Act (42 U.S.C. 274k(a)) is amended in the first sentence by inserting after "Secretary" the following: ", acting through the Administrator of the Health Resources and Services Administration,".

(2) TRANSITIONAL AND SAVINGS PROVISIONS.—

(A) With respect to amounts made available under appropriations Acts for the purpose of carrying out the program transferred pursuant to paragraph (1) from the National Institutes of Health, the transfer of the program may not be construed as affecting the availability of such amounts for such purpose.

(B) The Secretary shall ensure that, for fiscal 1994, the number of employees of the Department of Health and Human Services who are engaged in carrying out the program transferred by paragraph (1) is not less than the number of employees who were so engaged on June 28, 1993.

(b) PATIENT ADVOCACY; RECRUITMENT OF DONORS.—Section 379 of the Public Health Service Act (42 U.S.C. 274k) is amended—

(1) in subsection (b)—

(A) in paragraph (2), by striking "establish" and all that follows and inserting the following: "establish a program for patient advocacy in accordance with subsection (j);"; and

(B) in paragraph (5), by striking "recruit" and all that follows and inserting the following: "establish a program for the recruitment of bone marrow donors in accordance with subsection (k);";

(2) by striking subsection (j); and

(3) by inserting after subsection (i) the following subsections:

"(j) PATIENT ADVOCACY.—For purposes of subsection (b)(2), a program for patient advocacy is established in accordance with this subsection if—

"(1) the program is headed by a director;

"(2) with respect to the procurement of bone marrow, the program provides that the Director is to serve as an advocate on behalf of—

"(A) individuals who are registered with the Registry to become a recipient of a transplant from a biologically unrelated donor;

"(B) the families of such individuals; and

"(C) the physicians involved;

"(3) the program provides case management services for such individuals, families, and physicians; and

"(4) the program meets such other criteria as the Secretary may establish.

"(k) RECRUITMENT OF DONORS.—For purposes of subsection (b)(5), a program for the recruitment of bone marrow donors is established in accordance with this subsection if—

"(1) in recruiting an individual to enroll in the Registry, and in each subsequent stage of the process of recruitment, the program provides to the individual information regarding the possibility that, if it is determined that it is medically inappropriate for the individual to be a donor for the patient involved, a sibling of the individual may nevertheless be a medically appropriate donor for the patient;

"(2) in the case of an individual who is enrolled with the Registry, the program provides for annual (or more frequent) informational mailings to each such individual, which mailings concern the status of the activities of the Registry;

"(3) the program provides for the training of counselors to meet individually with individuals who are so enrolled and who, pursuant to the Registry, have been requested to undergo confirmatory testing pursuant to a search for bone marrow for a particular patient;

"(4) in the case of an individual described in paragraph (3), the program provides to the individual a general description of the medical condition of the patient involved and an assessment of the possibility that the individual is a medically appropriate donor for the patient; and

"(5) the program meets such other criteria as the Secretary may establish.".

SEC. 5. STUDY BY GENERAL ACCOUNTING OFFICE.

(a) IN GENERAL.—Section 379A(a) of the Public Health Service Act (42 U.S.C. 274*l*(a)) is amended by striking "conduct" in the matter preceding paragraph (1) and all that follows and inserting the following: "conduct a study for the purpose of—

"(1) assessing the extent to which the program carried out under section 379 maintains the confidentiality of the identity of individuals who are enrolled with the Registry;

"(2) assessing the extent to which such individuals cooperate with the Registry when the Registry requests the individuals to undergo supplemental testing regarding the donation of bone marrow;

"(3) assessing, in the case of such individuals who have been determined to be medically appropriate donors of bone marrow for the patients involved, the extent to which such individuals are willing to make a donation of bone marrow;

"(4) assessing the extent to which activities carried out pursuant to section 379(k) provide information to the individuals involved that is sufficient for the individuals to make informed decisions regarding the donation of bone marrow;

"(5) assessing the extent to which the case management services provided under section 379(j)(3) are effective in assisting patients in receiving the transplants involved;

"(6) developing recommendations on improving the program of the Registry, including proposals to increase the number of transplants with successful outcomes while maintaining the confidentiality of the identity of the individuals authorizing the donations of bone marrow;

"(7) assessing the extent to which efforts to recruit minority individuals to enroll in the Registry have been successful;

"(8) assessing, in the case of minority individuals who have been medically referred to receive a transplant of bone marrow, the measures that should be implemented to ensure that the Registry provides for such individuals a probability of locating a biologically unrelated, medically appropriate donor that is reasonably equivalent to the probability that exists with respect to Caucasian individuals who have been so referred; and

"(9) assessing the extent to which the fees imposed by transplant centers with respect to the search for a donor of bone marrow, when considered in light of the fees imposed by the Registry, constitute a significant obstacle to individuals in obtaining a transplant of bone marrow.".

(b) DATE CERTAIN FOR SUBMISSION OF REPORT.—Section 379A(b) of the Public Health Service Act (42 U.S.C. 274*l*(b)) is amended by striking "1 year" and all that follows through "this part" and inserting the following: "2 years after the date of the enactment of the Organ and Bone Marrow Transplantation Amendments of 1993".

SEC. 6. TRANSFER OF PROGRAMS; MISCELLANEOUS CONFORMING AMENDMENTS.

(a) IN GENERAL.—The Public Health Service Act (42 U.S.C. 201 et seq.), as amended by the preceding provisions of this Act, is amended—

(1) by striking title XVIII;

(2)(A) by transferring sections 371 through 377 from the current placement of such sections;

(B) by redesignating such sections as sections 1801 through 1807, respectively;

(C) by inserting such sections, in the appropriate sequence, after title XVII; and

(D) by inserting before section 1801 (as so redesignated) the following:

"TITLE XVIII—TRANSPLANTATION OF ORGANS AND OF BONE MARROW

"PART A—ORGAN TRANSPLANTATION";

(3)(A) by striking section 378;

(B) by transferring sections 379 and 379A from the current placement of such sections;

(C) by redesignating such sections as sections 1811 and 1813, respectively;

(D) by inserting such sections, in the appropriate sequence, at the end of title XVIII (as so designated); and

(E) by inserting before section 1811 (as so redesignated) the following:

"PART B—NATIONAL BONE MARROW DONOR REGISTRY"; and

(4) in title III (as amended by section 2008(i)(2)(B) of Public Law 103–43)—

(A) by striking the part designations and headings for each of parts H and I; and

(B) by redesignating parts J through N as parts H through L, respectively.

(b) CROSS-REFERENCES; OTHER CONFORMING AMENDMENTS.—Title XVIII of the Public Health Service Act, as added by subsection (a) of this section, is amended—

(1) in section 1801(b)(3)—

(A) in subparagraph (C), by striking "section 372(b)(2)(E)" and inserting "section 1802(b)(2)(E)"; and

(B) in subparagraph (H), by striking "section 372" and inserting "section 1802";

(2) in section 1802(b)(2)(A)(i)(I), by striking "section 371(b)(3)(E)" and inserting "section 1801(b)(3)(E)";

(3) in section 1803, by striking "section 376" and inserting "section 1806";

(4) in section 1804—

(A) in subsection (a), by striking "section 372 or 373" and inserting "section 1802 or 1803";

(B) in subsection (b)—

(i) in paragraph (1), by striking "section 371(a)(1)" and inserting "section 1801(a)(1)";

(ii) by striking paragraph (2);

(iii) by redesignating paragraph (3) as paragraph (2); and

(iv) in paragraph (2) (as so redesignated), by striking "section 371(a)(3)" and inserting "section 1801(a)(2)";

(C) in subsection (c), by striking "section 371 or 373" each place such term appears and inserting "section 1801 or 1803"; and

(D) in subsection (d)—

(i) in paragraph (2), by striking "section 373" and inserting "section 1803"; and

(ii) by adding at the end the following paragraph:

"(3) The term 'citizens or permanent resident aliens of the United States' means individuals who are citizens or nationals of the United States, or who are aliens lawfully admitted for permanent residence in the United States (or otherwise permanently residing in the United States under color of law).";

(5) in section 1807, by striking "SEC." and all that follows through "The Comptroller General" in subsection (a) and inserting the following:

"STUDY BY GENERAL ACCOUNTING OFFICE

"SEC. 1807. (a) IN GENERAL.—The Comptroller General";

(6) in section 1805(3), by striking "section 372" and inserting "section 1802";

(7) in section 1811, by striking "SEC." and all that follows through "The Secretary" in the first sentence in subsection (a) and inserting the following:

"NATIONAL REGISTRY

"SEC. 1811. (a) ESTABLISHMENT.—The Secretary"; and

(8) in section 1813—

(A) by striking "SEC." and all that follows through "The Comptroller General" in subsection (a) and inserting the following:

"STUDY BY GENERAL ACCOUNTING OFFICE

"SEC. 1813. (a) IN GENERAL.—The Comptroller General"; and

(B) in subsection (a)—

(i) in paragraph (1), by striking "section 379" and inserting "section 1811";

(ii) in paragraph (4), by striking "section 379(k)" and inserting "section 1811(k)"; and

(iii) in paragraph (5), by striking "section 379(j)(3)" and inserting "section 1811(j)(3)".

SEC. 7. INFORMATION, EDUCATION, AND TRAINING REGARDING TRANSPLANTATION OF BONE MARROW.

Part B of title XVIII of the Public Health Service Act, as added by section 6(a) of this Act, is amended by inserting after section 1811 the following section:

"INFORMATION, EDUCATION, AND TRAINING

"SEC. 1812. (a) IN GENERAL.—The Secretary may make grants to, and enter into contracts with, public or nonprofit private entities for the purpose of—

"(1) planning and conducting programs to provide information and education to the public on the need for donations of bone marrow; and

"(2) training individuals in requesting such donations.

"(b) PRIORITIES IN MAKING GRANTS.—In making awards of grants and contracts under subsection (a), the Secretary shall give priority to carrying out the purpose described in such subsection with respect to minority populations.".

SEC. 8. AUTHORIZATION OF APPROPRIATIONS FOR NEW TITLE XVIII.

Title XVIII of the Public Health Service Act, as added by section 6(a) of this Act, is amended by adding at the end the following part:

"PART C—GENERAL PROVISIONS

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1821. For the purpose of carrying out this title (other than section 1801(a)(1)), there are authorized to be appropriated $20,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.".

SEC. 9. STUDY REGARDING SYSTEM FOR ALLOCATION OF ORGANS.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct a study for the purpose of determining the feasibility, fairness, and enforceability of allocating organs in the United States based solely upon the clinical need of the patient involved and the viability of the organ involved, with no consideration given to the geographic area in which the transplant is to be performed or the geographic area in which the donation of the organ is made.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made in the study required in subsection (a) and the actions taken by the Secretary to implement changes consistent with the findings.

SEC. 10. ISSUANCE OF REGULATIONS.

(a) ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK.—

(1) IN GENERAL.—

(A) Not later than the expiration of the 90-day period beginning on the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall issue a proposed rule to establish regulations for criteria under part A of title XVIII of the Public Health Service Act (as added by section 6(a) of this Act).

(B) Not later than the expiration of the 1-year period beginning on the date of the enactment of this Act, the Secretary shall issue a final rule to establish the regulations described in subparagraph (A).

(2) CONSIDERATION OF CERTAIN BYLAWS AND POLICIES.—In developing regulations under paragraph (1), the Secretary shall consider the bylaws and policies of the United Network for Organ Sharing (established by contract under section 1802 of the Public Health Service Act, as redesignated by section 6(a) of this Act), as contained in the document entitled "Bylaws and Policies of the United Network for Organ Sharing".

(3) FAILURE TO ISSUE REGULATIONS BY DATE CERTAIN.—If the Secretary fails to issue a final rule under subparagraph (B) of paragraph (1) before the expiration of the period specified in such subparagraph—

(A) the proposed rule issued under subparagraph (A) of such paragraph is upon such expiration deemed to be the final rule under subparagraph (B) of such paragraph (and shall remain in effect until the Secretary issues a final rule under such subparagraph); or

(B) if no such proposed rule is issued before such expiration, the bylaws and policies specified in paragraph (2) and in effect upon such expiration are deemed to be the final rule under paragraph (1)(B) (and shall remain in effect until the Secretary issues a final rule under such paragraph).

(b) NATIONAL BONE MARROW DONOR REGISTRY.—

(1) IN GENERAL.—

(A) Not later than the expiration of the 90-day period beginning on the date of the enactment of this Act, the Secretary shall issue a proposed rule to establish regulations for standards, criteria, and procedures under part B of title XVIII of the Public Health Service Act (as added by section 6(a) of this Act).

(B) Not later than the expiration of the 1-year period beginning the date of the enactment of this Act, the Secretary shall issue a final rule to establish the regulations described in subparagraph (A).

(2) CONSIDERATION OF CERTAIN BYLAWS AND POLICIES.—In developing regulations under paragraph (1), the Secretary shall consider the bylaws and policies of the entity that operates the National Bone Marrow Donor Registry pursuant to a contract under section 1811 of the Public Health Service Act (as redesignated by section 6(a) of this Act).

(3) FAILURE TO ISSUE REGULATIONS BY DATE CERTAIN.—If the Secretary fails to issue a final rule under subparagraph (B) of paragraph (1) before the expiration of the period specified in such subparagraph—

(A) the proposed rule issued under subparagraph (A) of such paragraph is upon such expiration deemed to be the final rule under subparagraph (B) of such paragraph (and shall remain in effect until the Secretary issues a final rule under such subparagraph); or

(B) if no such proposed rule is issued before such expiration, the bylaws and policies specified in paragraph (2) and in effect upon such expiration

are deemed to be the final rule under paragraph (1)(B) (and shall remain in effect until the Secretary issues a final rule under such paragraph).

SEC. 11. EFFECTIVE DATES.

(a) IN GENERAL.—The amendments described in this Act are made upon the date of the enactment of this Act. Except as provided in subsection (b), such amendments take effect October 1, 1993, or upon the date of the enactment of this Act, whichever occurs later.

(b) QUALIFIED ORGAN PROCUREMENT ORGANIZATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 2 take effect January 1, 1994. Before such date, section 371 of the Public Health Service Act, as in effect on the day before the date of the enactment of this Act, continues to be in effect.

(2) ADDITIONAL PROVISION.—The amendment made by section 2(b)(2)(A) (relating to effective agreements with entities with facilities for organ donations) takes effect upon the expiration of the 180-day period beginning on the date on which a final rule takes effect under section 10(a). Before such amendment takes effect under the preceding sentence, section 371(b)(3)(A) of the Public Health Service Act, as in effect on the day before the date of the enactment of this Act, continues to be in effect.

PURPOSE AND SUMMARY

The purpose of H.R. 2659 is to extend for three fiscal years the authorization of appropriations for the National Organ Transplant Act (NOTA). $20 million is authorized for NOTA activities in fiscal year 1994 and "such funds as may be necessary" in fiscal years 1995 and 1996.

The NOTA provides statutory authority for national systems and procedures governing organ procurement, allocation, and transplantation. The Act is administered by the Health Resources and Services Administration of the Department of Health and Human Services.

In addition to extending appropriations authority, the legislation makes the following changes to strengthen the organ transplantation system and to assure more effectively the equity and effectiveness of organ procurement and allocation procedures:

Requires that the Secretary of Health and Human Services issue regulations establishing enforceable procedures for the procurement, allocation, and transplantation of solid organs and bone marrow. Such regulations also would establish the criteria that must be satisfied for membership in the Organ Procurement and Transplantation Network (OPTN). In issuing such regulations, the Secretary is directed to take into consideration existing policies and guidelines issued by the United Network for Organ Sharing and the National Bone Marrow Donor Registry.

Requires review and approval by the Secretary of any change in the amount of patient registration fees imposed by the private contractor administering the system of solid organ procurement.

Requires that organ allocation policies of the OPTN and the member organ procurement organizations (OPOs) maintain for each solid organ a single list of patients referred for transplants, and give preference to patients who are United States citizens or permanent resident aliens. Other foreign nationals may receive an organ from an unrelated donor only if no U.S. citizen or permanent resident alien is found to be a medically appropriate recipient of such organ.

Expands the system of patient advocacy for bone marrow transplant patients to include case management services.

Requires a study by the General Accounting Office of the National Marrow Donor Program.

Requires a study by the Secretary of Health and Human Services of the feasibility, fairness, and enforceability of allocating solid organs to patients based solely on the clinical need of the patient involved and the viability of the organ involved.

BACKGROUND AND NEED FOR THE LEGISLATION

The authorization of appropriations for the National Organ Transplant Act (NOTA) will expire on September 30, 1993. Reauthorization of the legislation is necessary to assure continuation of the existing national systems that facilitate the equitable and effective procurement and distribution of solid organs and bone marrow for transplantation.

In addition, the legislation makes several important reforms that will maintain public confidence in the fairness of the organ procurement and allocation process and will increase the availability of organs.

ASSURING EQUITY IN THE DISTRIBUTION OF SOLID ORGANS

During the hearings to re-examine the NOTA, concerns were raised about the current Organ Procurement and Transplantation Network (OPTN) allocation policies, particularly for liver transplants. Some Committee members believe the system may fail to meet the intent of the 1984 NOTA legislation, which states that "the Organ Procurement and Transplantation Network shall establish a system to allocate donated organs equitably among transplant patients according to established medical criteria."

There are concerns among some Committee members that the current allocation system is inequitable because it gives preference to patients within the OPO region, and in some cases to patients referred to a specific transplant program located in the region in which the organ is procured. This approach may result in organs being allocated to patients who are less medically needy relative to more seriously ill patients residing outside the region. For this reason, the Committee bill directs the Secretary of Health and Human Services (HHS) to conduct a study to determine the feasibility, fairness, and enforceability of allocating organs in the United States based solely on the medical need of the patient and the viability of the organ.

While this study is being conducted, HHS is expected to develop needed allocation regulations for use by the OPTN on this issue and not delay the issuance of proposed regulations on this matter because the study has not been completed. However, the Committee expects the Secretary to consult with the individuals or entity conducting the study while the study is under way. The Committee also expects that at the completion of the study, the Secretary will take account of the recommendations and findings of the study and, as appropriate, modify the regulations. Provisions in Section 10 of the Committee bill direct the Secretary of HHS to issue a proposed rule establishing OPTN policies and procedures within 90 days of the date of enactment, and a final rule establishing such policies and procedures within one year after the date of enact-

ment. Failure to issue such final rules will result in deeming the proposed rule as final, or, in the absence of a proposed rule, deeming current OPTN bylaws and policies as final rules that are legally enforceable.

Finally, the Committee directs HHS to ensure that this study is conducted by an objective entity that is not directly involved in or affected by the NOTA.

INCREASING ORGAN SUPPLY FOR U.S. CITIZENS AND PERMANENT RESIDENTS

The Committee bill provides that U.S. citizens or permanent resident aliens who are a suitable transplant recipient receive preference over non-resident aliens. The Committee is deeply concerned that a small number of transplant centers have facilitated transplants for non-resident aliens at a time when thousands of U.S. citizens remain on transplant waiting lists. Until there are sufficient numbers of organs to meet their needs, U.S. residents must take priority over permanent residents of foreign countries in receiving these precious resources. In many cases, the practice of offering transplants to foreign residents results in the denial of a chance at life for a U.S. resident. The continuation of such practices reduces public confidence in the objectivity of organ allocation policies and, unless curtailed, may discourage donation. Under the Committee bill, non-resident aliens are ineligible for solid organ transplants from nonrelated donors unless the OPO determines, after searching nationally, that there is no medically suitable citizen or permanent resident alien. The transfer of an organ from one OPO region to another may be required if there is no permanent resident available for transplantation.

The Committee notes that many of the nonresident aliens who have received transplants in the U.S. are permanent residents of nations that restrict organ allocation in ways that severely limit the availability of transplants from nonrelated donors. The Committee deeply regrets that the supply of organs in the United States is insufficient to meet both domestic and international demand. Thus, the Committee amendment provides for a more targeted use of grants and contracts to support public information and education on the need for organ donation and for training individuals who request donations.

OPO AGREEMENTS WITH DONOR HOSPITALS

The Committee believes that it is essential to clarify the intent of current law with respect to the requirements that OPOs maintain effective agreements with hospitals and other health care entities within their service areas for the purpose of identifying potential organ donors. To maximize the number of donated organs, the Committee believes that OPOs should have agreements with all the hospitals within their service area. The Committee also intends that each hospital should have an agreement with only one OPO. Since donated organs are first made available to patients waiting for transplants at centers within the service area of OPOs, it is important that patients have equitable access to the entire pool of potential donors throughout the OPO service area. This provides an opportunity to evaluate the performance of OPOs in obtaining or-

gans and for comparisons with other OPOs serving a comparable population base.

The Committee notes that at the beginning of the process of designating OPO service areas, the Secretary permitted the continuation of long-standing relationships between donor hospitals and OPOs, regardless of their respective geographic locations. However, it was anticipated that over time such relationships were likely to change and those hospitals with OPO agreements outside their geographic service area would establish agreements with the OPO designated for their service area. More recently, it has come to the attention of the Committee that some OPOs and hospitals are actively soliciting agreements outside of their designated service areas. The Committee believes that the inducements and conditions of such competition are not in the best interest of assuring patients equitable access to donated organs. Moreover, the results of such competition can serve to increase further the costs of organ acquisition.

However, the Committee recognizes that in certain circumstances it may be in the best interest of patients to permit OPO-hospital agreements that cross the geographic boundaries of the designated service areas. The Committee expects that the Secretary will, after study, develop criteria and a procedure tc evaluate applications for waivers of the general policy. The Committee believes that waivers should be based on criteria that ensure increased organ donation and contribute to equitable allocation of organs. The Committee recognizes that OPO-hospital relationships are critical to an effective organ donation program. Therefore, the Committee believes that the Secretary also must take steps to ensure that designated OPOs continue to meet their responsibilities and obligations under law and regulation through vigilant oversight and by providing hospitals and others an opportunity to present appropriately documented allegations of any failures by these organizations to perform properly, and to have such allegations considered by the Secretary.

It is intended that this provision will not become effective until 180 days after the Secretary of HHS publishes a final rule. The purpose of this delay is to provide sufficient time for a thorough study of the factors relevant to OPO-hospital agreements and to enable the Secretary to design procedures for resolving complaints about OPO performance and for considering applications for waivers from the prohibition against OPO-hospital agreements that cross service area boundaries.

SINGLE OPO—WIDE PATIENT WAITING LISTS

Organ allocation based, at a minimum, on a single patient list for each organ within OPOs assures an objective distribution mechanism directed toward equitable access for transplant patients. The Committee recognizes that organ allocation agreements consolidating the single lists of two or more OPOs are currently in place; these can continue under the provisions of the Committee bill. In a very few situations, such as in those OPOs which include large geographic areas with significant transportation limitations, a requirement for a single patient list may compromise organ viability and increase costs. Accordingly, the requirement for a single OPO

patient list rule may be waived if the Secretary "determines that the waiver is necessary to ensure the equitable allocation of organs * * * and maximize the opportunities for successful outcomes of transplants." The granting of waivers would be appropriate in circumstances where confining allocations to OPO service areas prevents equitable distribution of organs. Organ allocation must be patient driven. Under no circumstances should distribution be predicated on a rotational scheme among transplant centers or practitioners. The current OPTN contractor, the United Network for Organ Sharing (UNOS), has developed policies and procedures for reviewing and approving waivers to the single OPO patient list rule. The Committee believes such policies should be taken into account by the Secretary in making final determinations about the impact of a proposed waiver on equitable distribution within an OPO region.

PUBLIC PARTICIPATION IN GOVERNANCE OF OPO'S AND THE OPTN

The Committee bill includes provisions that make changes in the requirements for the composition of the governing boards of OPOs and OPTNs. Specifically, OPOs and the OPTN would be required to have boards of directors with not fewer than one-third of the members individual transplant recipients, family members of organ donors, and patients referred for transplants. In the case of OPOs, the Committee bill clarifies the intent of current law that such organizations may have an advisory board in lieu of a governing board when they are operated under the auspices of hospitals.

BONE MARROW DONOR REGISTRY

The Committee bill transfers Federal administration of the National Bone Marrow Denor Registry contract from the National Heart, Lung, and Blood Institute (NHLBI) to the Health Resources and Services Administration (HRSA). The principal purpose of the transfer is to consolidate the bone marrow donor recruitment system within the agency responsible for maintaining the system for allocating solid organs.

The Committee recommends that to administer properly a program the magnitude of the National Marrow Donor Program (NMDP), it will be necessary that the Secretary transfer additional personnel as well as program responsibility from the National Institutes of Health to HRSA. The Committee understands that when NHLBI assumed responsibility for the NMDP, it received no additional FTEs. The Committee expects consideration to be given to the number of NHLBI employees currently working on the NMDP program and that a corresponding increase in personnel be made at HRSA to accommodate their increased program and personnel responsibilities.

Although the Committee intends that the recruitment system for bone marrow and solid organs continue as separate contracts, the bone marrow registry could be strengthened through closer monitoring by Federal officials and adopting some of the data collection practices and board membership policies practiced by UNOS. The essential tasks of the NMDP in setting program priorities, policy analysis, data collection, and outcomes analysis tie in very closely

with HRSA's experience in overseeing the performance of UNOS over the last 6 years with the OPTN and the Scientific Registry.

The Committee is concerned that unlike UNOS, the Bone Marrow Donor Registry has practiced a policy of routinely reappointing rather than alternating membership on its Board of Directors. The policy followed by UNOS and other Public Health Service Advisory Boards is not to reappoint members immediately following expiration of their term. Although the registry has recently revised its board policies to limit members to no more than three consecutive 3-year terms, such a policy is inadequate as a means of reaching out to bring new members and different opinions to the board. The Committee urges HRSA to work with the NMDP to modify the bylaws to permit one-third of the Board to be replaced each year through an election. The NMDP could adopt a policy of staggered terms for Board membership and not permit the reappointment of a former board member until 1 year has elapsed following expiration of the previous term.

The Committee bill also strengthens the patient advocacy responsibilities of the National Registry in several aspects. One of these is the explicit requirement that the patient advocacy program include case management services for potential marrow recipients.

The Committee believes that to achieve its mission fully, the Registry must be attentive not only to the needs and concerns of donors, potential and actual, but also to those of patients in need of a marrow transplant. The most significant contribution the Registry can make to a patient, of course, is to maximize the prospects for a successful marrow transplant by maintaining a comprehensive donor registry covering the diverse range of antigen types. It is also essential that once a patient has been identified as a candidate, or potential candidate, for a marrow transplant, he or she receive individualized guidance, support, and assistance in fully understanding and utilizing the resources of the entire marrow transplant system. The policies and procedures of this system can seem complex and confusing, particularly to patients and families facing the pressures and anxieties that come with a fatal disease.

The principle elements of such a case management approach should, in the Committee's view, include at least the following: providing prompt and accurate information to the patient about the process and how to access all the various resources available; periodic communications with the patient and family at each significant stage in the search process to make sure the patient has complete information about the status of the search and to determine whether the patient's needs and concerns are being met; monitoring the search process and trouble-shooting any problems or delays; assisting with questions about fees, insurance coverage, or program eligibility; and breaking down any barriers to communication that might arise between the patient and the other participants in the transplant system.

The National Registry must assure that these services are being provided. It may do so through a combination of services furnished by the Office of Patient Advocacy and services furnished by a network of trained and competent individuals located at each transplant center participating in the program. However, the Committee wishes to make it clear that the Registry is to be held accountable

for providing training and guidance to such individuals, for monitoring their performance, and for being prepared to intervene in any individual case in which serious concerns arise with respect to the search process. In addition, physicians will be supported, assisted, and encouraged to serve as advocates on behalf of their patients. The patient, family, and physician must know there is always a responsible person to turn to whenever a problem arises.

Recruitment of minority donors must be a significant and prominent component of the national bone marrow program. Although the NMDP has made substantial progress in this area, the Committee believes that efforts at minority recruitment must continue to improve and increase. The Committee is aware of concerns that have been raised about the adequacy of minority recruitment activities and of the existence of several organizations that have developed successful approaches to recruiting members of racial and ethnic minority groups as bone marrow donors. Such organizations may be able, through an influx of federal funds, to increase and enhance those activities and become more active contributors to the national bone marrow transplant system. The Committee encourages the Secretary to consider ways in which such funding might be provided to new grantees or contractors, consistent with the goal of maintaining a well-coordinated national system, all parts of which are accessible to patients needing a bone marrow transplant.

In this regard, the Committee proposal authorizes a program of grants for the purpose of educating the public about the importance of bone marrow donation and clearly instructs the Secretary to give priority to programs directed to increasing the numbers of minority donors. The Committee notes that the legislation provides the Secretary with flexibility to award recruitment funds to more than one organization, but does not instruct that this be done or specify a certain amount or percentage of funds to be allocated for this purpose. The bill clearly allows for different organizations to perform various functions associated with the national bone marrow program, and to incorporate their special expertise into the national program. Recruitment of donors from racial and ethnic minority populations is one such activity.

The Committee proposal also requires that the General Accounting Office conduct a study of the success of minority donor recruitment programs and make recommendations about methods to increase recruitment so that members of racial and ethnic minority groups will have a greater likelihood of finding a bone marrow donor.

Hearings

The Committee's Subcommittee on Health and the Environment held two days of hearings on the reauthorization of the National Organ Transplant Act on April 22 and the National Bone Marrow Donor Registry on May 19, 1993. Testimony was received from 19 witnesses, representing 14 organizations.

Committee Consideration

On July 1, 1993, the Subcommittee on Health and the Environment met in open session and ordered a Subcommittee Print re-

ported to the Committee by voice vote as a clean bill, a quorum being present. H.R. 2659, legislation reflecting the Subcommittee's action, was introduced on July 15, 1993. On July 27, 1993, the Committee met in open session and ordered reported the bill H.R. 2659 with an amendment, by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee has made oversight findings that are reflected in the legislative report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the enactment of H.R. 2659 will not affect direct spending or receipts. The bill authorizes $20 million in fiscal year 1994 and "such funds as may be necessary" in fiscal years 1995 and 1996.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 13, 1993.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2659, Organ and Bone Marrow Transplantation Amendments of 1993, as ordered reported by the House Committee on Energy and Commerce on July 27, 1993.

Enactment of H.R. 2659 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director*.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2659.
2. Bill title: Organ and Bone Marrow Transplantation Amendments of 1993.
3. Bill status: As ordered reported by the House Committee on Energy and Commerce on July 27, 1993.
4. Bill purpose: To reauthorize and revise programs regarding organ and bone marrow transplantation.
5. Estimated cost to the Federal Government:

FEDERAL GOVERNMENT COSTS

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998
Bill total:					
Estimated authorization amounts	20	21	21	....	....
Estimated outlays	11	18	21	9	2

The costs of this bill fall within budget function 550.

Basis of Estimate: H.R. 2659 would reauthorize funding for programs regarding organ procurement and bone marrow transplantation at $20 million in fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996. These programs include an organ procurement network, a national bone marrow donor registry, and funding for grants to organ procurement organizations. CBO estimated the fiscal year 1995 through 1996 funding levels by adjusting the fiscal year 1994 authorization by projected inflation.

This estimate assumes that all authorizations are fully appropriated at the beginning of each fiscal year. Outlays are estimated using spendout rates computed by CBO on the basis of recent program data.

6. Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 sets up procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 2659 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to this bill.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Connie Takata.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

The authorization levels proposed by the legislation are relatively modest in comparison to the medical and other economic costs of solid organ and bone marrow transplantation. The funding made available through the National Organ Transplant Act is critical to maintaining systems to assure the availability, equity, confidentiality fairness, and objectivity of bone marrow and solid organ donation.

AGENCY VIEWS

The Committee has not received correspondence from the Secretary of Health and Human Services concerning the Administration's position on this legislation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

PUBLIC HEALTH SERVICE ACT

* * * * * * *

TITLE III—GENERAL POWERS AND DUTIES OF PUBLIC HEALTH SERVICE

* * * * * * *

[PART H—ORGAN TRANSPLANTS]

* * * * * * *

[PART I—NATIONAL BONE MARROW DONOR REGISTRY]

* * * * * * *

[SEC. 378. AUTHORIZATION OF APPROPRIATIONS.

[For the purpose of carrying out this part, there are authorized to be appropriated $8,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.]

PART [J] *H*—INJURY CONTROL

RESEARCH

SEC. 391. (a) The Secretary, through the Director of the Centers for Disease Control and Prevention, shall—

(1) conduct, and give assistance to public and nonprofit private entities, scientific institutions, and individuals engaged in the conduct of, research relating to the causes, mechanisms, prevention, diagnosis, treatment of injuries, and rehabilitation from injuries;

* * * * * * *

PART [K] *I*—HEALTH CARE SERVICES IN THE HOME

Subpart I—Grants for Demonstration Projects

SEC. 395. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make not less than 5, and not more than 20, grants to States for the purpose of assisting grantees in carrying out demonstration projects—

(1) to identify low-income individuals who can avoid institutionalization or prolonged hospitalization if skilled nursing care services, homemaker or home health aide services, or per-

sonal care services are provided in the homes of the individuals;

* * * * * * *

PART [L] *J*—SERVICES FOR CHILDREN OF SUBSTANCE ABUSERS

SEC. 399D. GRANTS FOR SERVICES FOR CHILDREN OF SUBSTANCE ABUSERS.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make grants to public and nonprofit private entities for the purpose of carrying out programs—

* * * * * * *

PART [M] *K*—NATIONAL PROGRAM OF CANCER REGISTRIES

SEC. 399H. NATIONAL PROGRAM OF CANCER REGISTRIES.

(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States, or may make grants or enter into contracts with academic or nonprofit organizations designated by the State to operate the State's cancer registry in lieu of making a grant directly to the State, to support the operation of population-based, statewide cancer registries in order to collect, for each form of in-situ and invasive cancer (with the exception of basal cell and squamous cell carcinoma of the skin), data concerning—

* * * * * * *

PART [N] *L*—NATIONAL FOUNDATION FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION

SEC. 399F. ESTABLISHMENT AND DUTIES OF FOUNDATION.

(a) IN GENERAL.—There shall be established in accordance with this section a nonprofit private corporation to be known as the National Foundation for the Centers for Disease Control and Prevention (in this part referred to as the "Foundation"). The Foundation shall not be an agency or instrumentality of the Federal Government, and officers, employees, and members of the board of the Foundation shall not be officers or employees of the Federal Government.

* * * * * * *

[TITLE XVIII—PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH

[ESTABLISHMENT OF COMMISSION

[SEC. 1801. (a) ESTABLISHMENT.—(1) There is established the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (hereinafter in this title referred to as the "Commission") which shall be composed of

eleven members appointed by the President. The members of the Commission shall be appointed as follows:

[(A) Three of the members shall be appointed from individuals who are distinguished in biomedical or behavioral research.

[(B) Three of the members shall be appointed from individuals who are distinguished in the practice of medicine or otherwise distinguished in the provision of health care.

[(C) Five of the members shall be appointed from individuals who are distinguished in one or more of the fields of ethics, theology, law, the natural sciences (other than a biomedical or behavioral science), the social sciences, the humanities, health administration, government, and public affairs.

[(2) No individual who is a full-time officer or employee of the United States may be appointed as a member of the Commission. The Secretary of Health, Education, and Welfare, the Secretary of Defense, the Director of Central Intelligence, the Director of the Office of Science and Technology Policy, the Administrator of Veterans' Affairs, and the Director of the National Science Foundation shall each designate an individual to provide liaison with the Commission.

[(3) No individual may be appointed to serve as a member of the Commission if the individual has served for two terms of four years each as such a member.

[(4) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

[(b) TERMS.—(1) Except as provided in paragraphs (2) and (3), members shall be appointed for terms of four years.

[(2) Of the members first appointed—

[(A) four shall be appointed for terms of three years, and

[(B) three shall be appointed for terms of two years,

as designated by the President at the time of appointment.

[(3) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

[(c) CHAIRMAN.—The Chairman of the Commission shall be appointed by the President, by and with the advice and consent of the Senate, from members of the Commission.

[(d) MEETINGS.—(1) Seven members of the Commission shall constitute a quorum for business, but a lesser number may conduct hearings.

[(2) The Commission shall meet at the call of the Chairman or at the call of a majority of its members.

[(e) COMPENSATION.—(1) Members of the Commission shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

[(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed inter-

mittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

[DUTIES OF THE COMMISSION

[SEC. 1802. (a) STUDIES.—(1) The Commission shall undertake studies of the ethical and legal implications of—

[(A) the requirements for informed consent to participation in research projects and to otherwise undergo medical procedures;

[(B) the matter of defining death, including the advisability of developing a uniform definition of death;

[(C) voluntary testing, counseling, and information and education programs with respect to genetic diseases and conditions, taking into account the essential equality of all human beings, born and unborn;

[(D) the differences in the availability of health services as determined by the income or residence of the persons receiving the services;

[(E) current procedures and mechanisms designed (i) to safeguard the privacy of human subjects of behavioral and biomedical research, (ii) to ensure the confidentiality of individually identifiable patient records, and (iii) to ensure appropriate access of patients to information continued in such records, and

[(F) such other matters relating to medicine or biomedical or behavioral research as the President may designate for study by the Commission.

The Commission shall determine the priority and order of the studies required under this paragraph.

[(2) The Commission may undertake an investigation or study of any other appropriate matter which relates to medicine or biomedical or behavioral research (including the protection of human subjects of biomedical or behavioral research) and which is consistent with the purposes of this title on its own initiative or at the request of the head of the Federal agency.

[(3) In order to avoid duplication of effort, the Commission may, in lieu of, or as part of, any study or investigation required or otherwise conducted under this subsection, use a study or investigation conducted by another entity if the Commission sets forth its reasons for such use.

[(4) Upon the completion of each investigation or study undertaken by the Commission under this subsection (including a study or investigation which merely uses another study or investigation), it shall report its findings (including any recommendations for legislation or administrative action) to the President and the Congress and to each Federal agency to which a recommendation in the report applies.

[(b) RECOMMENDATIONS TO AGENCIES.—(1) Within 60 days of the date a Federal agency receives a recommendation from the Commission that the agency take any action with respect to its rules, policies, guidelines, or regulations, the agency shall publish such recommendation in the Federal Register and shall provide opportunity for interested persons to submit written data, views, and arguments with respect to adoption of the recommendation.

[(2) Within the 180-day period beginning on the date of such publication, the agency shall determine whether the action proposed by such recommendation is appropriate, and, to the extent that it determines that—

[(A) such action is not appropriate, the agency shall, within such time period, provide the Commission with, and publish in the Federal Register, a notice of such determination (including an adequate statement of the reasons for the determination), or

[(B) such action is appropriate, the agency shall undertake such action as expeditiously as feasible and shall notify the Commission of the determination and the action undertaken.

[(c) REPORT ON PROTECTION OF HUMAN SUBJECTS.—The Commission shall biennially report to the President, the Congress, and appropriate Federal agencies on the protection of human subjects of biomedical and behavioral research. Each such report shall include a review of the adequacy and uniformity (1) of the rules, policies, guidelines, and regulations of all Federal agencies regarding the protection of human subjects of biomedical or behavioral research which such agencies conduct or support, and (2) of the implementation of such rules, policies, guidelines, and regulations by such agencies, and may include such recommendations for legislation and administrative action as the Commission deems appropriate.

[(d) ANNUAL REPORT.—Not later than December 15 of each year (beginning with 1979) the Commission shall roport to the President, the Congress, and appropriate Federal agencies on the activities of the Commission during the fiscal year ending in such year. Each such report shall include a complete list of all recommendations described in subsection (b)(1) made to Federal agencies by the Commission during the fiscal year and the actions taken, pursuant to subsection (b)(2), by the agencies upon such recommendations, and may include such recommendations for legislation and administrative action as the Commission deems appropriate.

[(e) PUBLICATIONS.—The Commission may at any time publish and disseminate to the public reports respecting its activities.

[(f) DEFINITIONS.—For purposes of this section:

[(1) The term "Federal agency" means an authority of the government of the United States, but does not include (A) the Congress, (B) the courts of the United States, and (C) the government of the Commonwealth of Puerto Rico, the government of the District of Columbia, or the government of any territory or possession of the United States.

[(2) The term "protection of human subjects" includes the protection of the health, safety, and privacy of individuals.

[ADMINISTRATIVE PROVISIONS

[SEC. 1803. (a) HEARINGS.—The Commission may for the purpose of carrying out this title hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem advisable.

[(b) STAFF.—(1) The Commission may appoint and fix the pay of such staff personnel as it deems desirable. Such personnel shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be

paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

[(2) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basis pay in effect for grade GS–18 of the General Schedule.

[(3) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under this title.

[(c) CONTRACTS.—The Commission, in performing its duties and functions under this title, may enter into contracts with appropriate public or nonprofit private entities. The authority of the Commission to enter into such contracts is effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

[(d) INFORMATION.—(1) The Commission may secure directly from any Federal agency information necessary to enable it to carry out this title. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

[(2) The Commission shall promptly arrange for such security clearances for its members and appropriate staff as are necessary to obtain access to classified information needed to carry out its duties under this title.

[(3) The Commission shall not disclose any information reported to or otherwise obtained by the Commission which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of paragraphs (4) and (6) of subsection (b) of such section.

[(e) SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

[AUTHORIZATION OF APPROPRIATIONS; TERMINATION OF COMMISSION

[SEC. 1804. (a) AUTHORIZATIONS.—To carry out this title there are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, $5,000,000 for the fiscal year ending September 30, 1981, and $5,000,000 for the fiscal year ending September 30, 1982.

[(b) FEDERAL ADVISORY COMMITTEE ACT; TERMINATION.—The Commission shall be subject to the Federal Advisory Committee Act, except that, under section 14(a)(1)(B) of such Act, the Commission shall terminate on December 31, 1982.]

TITLE XVIII—TRANSPLANTATION OF ORGANS AND OF BONE MARROW

PART A—ORGAN TRANSPLANTATION

ORGAN PROCUREMENT ORGANIZATIONS

SEC. [371.] *1801.* (a)(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b).

[(2) The Secretary may make grants for the establishment, initial operation, consolidation, and expansion of qualified organ procurement organizations described in subsection (b).

[(3) The Secretary may make grants to, and enter into contracts with, qualified organ procurement organizations described in subsection (b) and other nonprofit private entities for the purpose of carrying out special projects designed to increase the number of organ donors.]

(2)(A) The Secretary may make grants to, and enter into contracts with, qualified organ procurement organizations described in subsection (b) and other public or nonprofit private entities for the purpose of—

(i) planning and conducting programs to provide information and education to the public on the need for organ donations; and

(ii) training individuals in requesting such donations.

(B) In making awards of grants and contracts under subparagraph (A), the Secretary shall give priority to carrying out the purpose described in such subparagraph with respect to minority populations.

(b)(1) A qualified organ procurement [organization for which grants may be made under subsection (a) is] *organization described in this subsection is* an organization which, as determined by the Secretary, will carry out the functions described in paragraph [(2)] *(3)* and—

(A) is a nonprofit entity,

(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act for the procurement of kidneys,

(D) has procedures to obtain payment for non-renal organs provided to transplant centers,

(E) has a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metrepolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of the area,

(F) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

(G) [has a board of directors or an advisory board which] *has a board of directors (or an advisory board, in the case of a hospital-based organization) which—*

(i) is composed of—

(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

(II) [members who represent the public residing in such area,] *individuals who have received a transplant of an organ, individuals who are part of the family of an individual who has donated an organ, and individuals who have been medically referred to receive a transplant of an organ (or individuals who are part of the family of individuals who have been so referred), which individuals shall in the aggregate constitute not less than 1/3 of the membership of the board and which members shall, to the extent practicable, be residents of the service area involved,*

(III) a physician with knowledge, experience, or skill in the field of histocompatability or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility,

(IV) a physician with knowledge or skill in the field of neurology, and

(V) from each transplant center in its service area which has arrangements described in paragraph (2)(G) with the organization, a member who is a surgeon who has practicing privileges in such center and who performs organ transplant surgery,

(ii) has the authority to recommend policies for the procurement of organs and the other functions described in paragraph (2), and

(iii) has no authority over any other activity of the organization.

(2)(A) Not later than 90 days after the date of the enactment of this paragraph, the Secretary shall publish in the Federal Register a notice of proposed rulemaking to establish criteria for determining whether an entity meets the requirement established in paragraph (1)(E).

(B) Not later than 1 year after the date of enactment of this paragraph, the Secretary shall publish in the Federal Register a final rule to establish the criteria described in subparagraph (A).

(3) An organ procurement organization [shall—

[(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,]

shall comply with the following:

(A)(i) With respect to each hospital or other entity in its service area that has facilities for organ donations, the organization shall have an effective agreement with the entity under which

the entity identifies potential organ donors and notifies the organization, subject to clause (ii).

(ii) The Secretary may waive the requirement of clause (i) to the extent determined by the Secretary to be necessary to promote organ donation and the equitable allocation of organs.

(B) *The organization shall* conduct and participate in systematic efforts, including professional education, to acquire all usable organs from potential donors[,].

(C) *The organization shall* arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the Organ Procurement and Transplantation Network under section [372(b)(2)(E)] *1802(b)(2)(E)*, including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome[,].

(D) *The organization shall* arrange for the appropriate tissue typing of donated organs[,].

(E)*(i) The organization shall* have a system to allocate donated organs equitably among transplant patients according to established medical criteria[,].

(ii) The organization shall, subject to clause (iii), ensure that the system under clause (i) allocates each type of organ on the basis of a single list, maintained exclusively by the organization, of individuals who have been medically referred to a transplant center in the service area of the organization in order to receive a transplant of the type of organ with respect to which the list is maintained, and who are citizens or permanent resident aliens of the United States.

(iii) Upon the request of the organization, the Secretary may, with respect to the service area of the organization, waive the requirement of clause (ii) regarding a single list if the Secretary determines that the waiver is necessary to ensure the equitable allocation of organs of the type involved and maximize the opportunities for successful outcomes of transplants of such organs.

(F) *The organization shall* provide or arrange for the transportation of donated organs to transplant centers[,].

(G) *The organization shall* have arrangements to coordinate its activities with transplant centers in its service area[,].

(H) *The organization shall* [participate in the Organ Procurement Transplantation Network established under section 372,] *be a member of, and abide by the rules and requirements of, the Organ Procurement and Transplantation Network established under section 1802.*

(I) *The organization shall* have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all usable tissues are obtained from potential donors[,].

(J) *The organization shall* evaluate annually the effectiveness of the organization in acquiring potentially available organs[, and].

(K) *The organization shall* assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors.

ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

SEC. [372.] *1802.* (a) The Secretary shall by contract provide for the establishment and operation of an Organ Procurement and Transplantation Network which meets the requirements of subsection (b). The amount provided under such contract in any fiscal year may not exceed $2,000,000. Funds for such contracts shall be made available from funds available to the Public Health Service from appropriations for fiscal years beginning after fiscal year 1984.

(b)(1) The Organ Procurement and Transplantation Network shall carry out the functions described in paragraph (2) and shall—

(A) be a private nonprofit entity that has an expertise in organ procurement and transplantation, [and

[(B) have a board of directors—

[(i) that includes representatives of organ procurement organizations (including organizations that have received grants under section 371), transplant centers, voluntary health associations, and the general public; and

[(ii) that shall establish an executive committee and other committees, whose chairpersons shall be selected to ensure continuity of leadership for the board.]

(B) have a board of directors composed of not more than 32 members, whose membership includes—

(i) representatives of organ procurement organizations, transplant centers, and voluntary health associations; and

(ii) individuals who have received a transplant of an organ, individuals who are part of the family of an individual who has donated an organ, and individuals who have been medically referred to receive a transplant of an organ (or individuals who are part of the family of individuals who have been so referred), which individuals shall in the aggregate constitute not less than 1/3 of the membership of the board; and

(C) establish, through such board of directors, an executive committee and other committees, the chairs of which shall be selected to ensure continuity of leadership for the board.

(2) The Organ Procurement and Transplantation Network [shall—

[(A) establish in one location or through regional centers—

[(i) a national list of individuals who need organs, and] *shall—*

(A) establish (in one location or through regional centers)—

(i) with respect to each type of organ—

(I) a national list of individuals who have been medically referred to receive a transplant of the type of organ with respect to which the list is maintained and who are citizens or permanent resident aliens of the United States (which list shall include the names of all individuals included on lists in effect under section 1801(b)(3)(E)), and

(II) a national list of individuals who have been so referred and who are in the United States but are not such citizens or such aliens, and

(ii) a national system, through the use of computers and in accordance with established medical criteria, to match organs and individuals included in the list, especially individuals whose immune system makes it difficult for them to receive organs,

(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,

(C) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

(D) assist organ procurement organizations in the nationwide distribution of organs equitably among transplant patients,

(E) adopt and use standards of quality for the acquisition and transportation of donated organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,

(F) prepare and distribute, on a regionalized basis (and, to the extent practicable, among regions or on a national basis), samples of blood sera from individuals who are included on the list and whose immune system makes it difficult for them to receive organs, in order to facilitate matching the compatibility of such individuals with organ donors,

(G) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

(H) provide information to physicians and other health professionals regarding organ donation,

(I) collect, analyze, and publish data concerning organ donation and transplants,

(J) carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation, [and]

(K) work actively to increase the supply of donated organs[.],

(L) submit to the Secretary an annual report containing information on the comparative costs and patient outcomes at each transplant center affiliated with the organ procurement and transplantation network[.],

(M) establish the condition that, with respect to the type of organ involved, the list under subclause (II) of subparagraph (A)(i) may be considered in allocating an organ only if no individual on the list under subclause (I) of such subparagraph is a medically appropriate recipient for the organ,

(N) submit to the Secretary for review and approval any change in the amount of fees imposed by the Network for the registration of individuals on the lists maintained under subparagraph (A)(i) (which change is deemed to be approved if the Secretary does not provide otherwise before the expiration of the 30-day period beginning on the date on which the change is submitted to the Secretary),

(O) make available to the Secretary such information, books, and records regarding the Network as the Secretary may require, and

(P) meet such criteria regarding compliance with this part as the Secretary may establish.

SCIENTIFIC REGISTRY

SEC. [373.] *1803.* The Secretary shall, by grant or contract, develop and maintain a scientific registry of the recipients of organ transplants. The registry shall include such information respecting patients and transplant procedures as the Secretary deems necessary to an ongoing evaluation of the scientific and clinical status of organ transplantation. The Secretary shall prepare for inclusion in the report under section [376] *1806* an analysis of information derived from the registry.

GENERAL PROVISIONS RESPECTING GRANTS AND CONTRACTS

SEC. [374.] *1804.* (a) No grant may be made under this part or contract entered into under section [372 or 373] *section 1802 or 1803* unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall by regulation prescribe.

(b)(1) A grant for planning under section [371(a)(1)] *1801(a)(1)* may be made for one year with respect to any organ procurement organization and may not exceed $100,000.

[(2) Grants under section 371(a)(2) may be made for two years. No such grant may exceed $500,000 for any year and no organ procurement organization may receive more than $800,000 for initial operation or expansion.

[(3)] *(2)* Grants or contracts under section [371(a)(3)] *1801(a)(2)* may be made for not more than 3 years.

(c)(1) The Secretary shall determine the amount of a grant or contract made under section [371 or 373] *1801 or 1803*. Payments under such grants and contracts may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants and contracts.

(2)(A) Each recipient of a grant or contract under section [371 or 373] *1801 or 1803* shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant or contract, the total cost of the undertaking in connection with which such grant or contract was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(B) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant or contract

under section [371 or 373] *1801 or 1803* that are pertinent to such grant or contract.

(d) For purposes of this part:

(1) The term "transplant center" means a health care facility in which transplants of organs are performed.

(2) The term "organ" means the human kidney, liver, heart, lung, pancreas, and any other human organ (other than corneas and eyes) specified by the Secretary by regulation and for purposes of section [373] *1803*, such term includes bone marrow.

(3) The term "citizens or permanent resident aliens of the United States" means individuals who are citizens or nationals of the United States, or who are aliens lawfully admitted for permanent residence in the United States (or otherwise permanently residing in the United States under color of law).

ADMINISTRATION

SEC. [375.] *1805.* The Secretary shall designate and maintain an identifiable administrative unit in the Public Health Service to—

(1) administer this part and coordinate with the organ procurement activities under title XVIII of the Social Security Act,

(2) conduct a program of public information to inform the public of the need for organ donations,

(3) provide technical assistance to organ procurement organizations, the Organ Procurement and Transplantation Network established under section [372] *1802*, and other entities in the health care system involved in organ donations, procurement, and transplants, and

(4) provide information—

(i) to patients, their families, and their physicians about transplantation; and

(ii) to patients and their families about the resources available nationally and in each State, and the comparative costs and patient outcomes at each transplant center affiliated with the organ procurement and transplantation network, in order to assist the patients and families with the costs associated with transplantation.

REPORT

SEC. [376.] *1806.* Not later than February 10 of 1991 and of each second year thereafter, the Secretary shall publish, and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate. a report on the scientific and clinical status of organ transplantation. The Secretary shall consult with the Director of the National Institutes of Health and the Commissioner of the Food and Drug Administration in the preparation of the report.

[SEC. 377. STUDY BY GENERAL ACCOUNTING OFFICE.

[(a) IN GENERAL.—The Comptroller General]

STUDY BY GENERAL ACCOUNTING OFFICE

SEC. 1807. (a) IN GENERAL.—The Comptroller General of the United States shall conduct a study for the purpose of determining—

(1) the extent to which the procurement and allocation of organs have been equitable, efficient, and effective;

(2) the problems encountered in the procurement and allocation; and

(3) the effect of State required-request laws.

(b) REPORT.—Not later than January 7, 1992, the Comptroller General of the United States shall complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.

PART B—NATIONAL BONE MARROW DONOR REGISTRY

[SEC. 379. NATIONAL REGISTRY.

[(a) ESTABLISHMENT.—The Secretary]

NATIONAL REGISTRY

SEC. 1811. (a) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall by contract establish and maintain a National Bone Marrow Donor Registry (referred to in this part as the "Registry") that meets the requirements of this section. The Registry shall be under the general supervision of the Secretary, and under the direction of a board of directors that shall include representatives of marrow donor centers, marrow transplant centers, persons with expertise in the social science, and the general public.

(b) FUNCTIONS.—The Registry shall—

(1) establish a system for finding marrow donors suitably matched to unrelated recipients for bone marrow transplantation;

(2) [establish a system for patient advocacy, separate from mechanisms for donor advocacy, that directly assists patients, their families, and their physicians in the search for an unrelated marrow donor;] ***establish a program for patient advocacy in accordance with subsection (j);***

(3) increase the representation of individuals from racial and ethnic minority groups in the pool of potential donors for the Registry in order to enable an individual in a minority group, to the extent practicable, to have a comparable chance of finding a suitable unrelated donor as would an individual not in a minority group;

(4) provide information to physicians, other health care professionals, and the public regarding bone marrow transplantation;

(5) [recruit potential bone marrow donors;] ***establish a program for the recruitment of bone marrow donors in accordance with subsection (k);***

(6) collect, analyze, and publish data concerning bone marrow donation and transplantation; and

(7) support studies and demonstration projects for the purpose of increasing the number of individuals, especially minorities, who are willing to be marrow donors.

(c) CRITERIA, STANDARDS, AND PROCEDURES.—Not later than 180 days after the date of enactment of this part, the Secretary shall establish and enforce, for entities participating in the program, including the Registry, individual marrow donor centers, marrow donor registries, marrow collection centers, and marrow transplant centers—

(1) quality standards and standards for tissue typing, obtaining the informed consent of donors, and providing patient advocacy;

(2) donor selection criteria, based on established medical criteria, to protect both the donor and the recipient and to prevent the transmission of potentially harmful infectious diseases such as the viruses that cause hepatitis and the etiologic agent for Acquired Immune Deficiency Syndrome;

(3) procedures to ensure the proper collection and transportation of the marrow;

(4) standards that require the provision of information to patients, their families, and their physicians at the start of the search process concerning—

(A) the resources available through the Registry;

(B) all other marrow donor registries meeting the standards described in this paragraph; and

(C) in the case of the Registry—

(i) the comparative costs of all charges by marrow transplant centers incurred by patients prior to transplantation; and

(ii) the success rates of individual marrow transplant centers;

(5) standards that—

(A) require the establishment of a system of strict confidentiality of records relating to the identity, address, HLA type, and managing marrow donor center for marrow donors and potential marrow donors; and

(B) prescribe the purposes for which the records described in subparagraph (A) may be disclosed, and the circumstances and extent of the disclosure; and

(6) in the case of a marrow donor center or marrow donor registry participating in the program, procedures to ensure the establishment of a method for integrating donor files, searches, and general procedures of the center or registry with the Registry.

(d) COMMENT PROCEDURES.—The Secretary shall establish and provide information to the public on procedures, which may include establishment of a policy advisory committee, under which the Secretary shall receive and consider comments from interested persons relating to the manner in which the Registry is carrying out the duties of the Registry under subsection (b) and complying with the criteria, standards, and procedures described in subsection (c).

(e) CONSULTATION.—The Secretary shall consult with the board of directors of the Registry and the bone marrow donor program of

the Department of the Navy in developing policies affecting the Registry.

(f) APPLICATION.—To be eligible to enter into a contract under this section, an entity shall submit to the Secretary and obtain approval of an application at such time, in such manner, and containing such information as the Secretary shall by regulation prescribe.

(g) ELIGIBILITY.—Entities eligible to receive a contract under this section shall include private nonprofit entities.

(h) RECORDS.—

(1) RECORDKEEPING.—Each recipient of a contract or subcontract under subsection (a) shall keep such records as the Secretary shall prescribe, including records that fully disclose the amount and disposition by the recipient of the proceeds of the contract, the total cost of the undertaking in connection with which the contract was made, and the amount of the portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) EXAMINATION OF RECORDS.—The Secretary and the Comptroller General of the United States shall have access to any books, documents, papers, and records of the recipient of a contract or subcontract entered into under this section that are pertinent to the contract, for the purpose of conducting audits and examinations.

(i) PENALTIES FOR DISCLOSURE.—Any person who discloses the content of any record referred to in subsection (c)(5)(A) without the prior written consent of the donor or potential donor with respect to whom the record is maintained, or in violation of the standards described in subsection (c)(5)(B), shall be imprisoned for not more than 2 years or fined in accordance with title 18, United States Code, or both.

[(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $15,000,000 for fiscal year 1991 and such sums as may be necessary for each of fiscal years 1992 and 1993.]

(j) PATIENT ADVOCACY.—For purposes of subsection (b)(2), a program for patient advocacy is established in accordance with this subsection if—

(1) the program is headed by a director;

(2) with respect to the procurement of bone marrow, the program provides that the Director is to serve as an advocate on behalf of—

(A) individuals who are registered with the Registry to become a recipient of a transplant from a biologically unrelated donor;

(B) the families of such individuals; and

(C) the physicians involved;

(3) the program provides case management services for such individuals, families, and physicians; and

(4) the program meets such other criteria as the Secretary may establish.

(k) RECRUITMENT OF DONORS.—For purposes of subsection (b)(5), a program for the recruitment of bone marrow donors is established in accordance with this subsection if—

(1) in recruiting an individual to enroll in the Registry, and in each subsequent stage of the process of recruitment, the program provides to the individual information regarding the possibility that, if it is determined that it is medically inappropriate for the individual to be a donor for the patient involved, a sibling of the individual may nevertheless be a medically appropriate donor for the patient;

(2) in the case of an individual who is enrolled with the Registry, the program provides for annual (or more frequent) informational mailings to each such individual, which mailings concern the status of the activities of the Registry;

(3) the program provides for the training of counselors to meet individually with individuals who are so enrolled and who, pursuant to the Registry, have been requested to undergo confirmatory testing pursuant to a search for bone marrow for a particular patient;

(4) in the case of an individual described in paragraph (3), the program provides to the individual a general description of the medical condition of the patient involved and an assessment of the possibility that the individual is a medically appropriate donor for the patient; and

(5) the program meets such other criteria as the Secretary may establish.

INFORMATION, EDUCATION, AND TRAINING

SEC. 1812. (a) IN GENERAL.—The Secretary may make grants to, and enter into contracts with, public or nonprofit private entities for the purpose of—

(1) planning and conducting programs to provide information and education to the public on the need for donations of bone marrow; and

(2) training individuals in requesting such donations.

(b) PRIORITIES IN MAKING GRANTS.—In making awards of grants and contracts under subsection (a), the Secretary shall give priority to carrying out the purpose described in such subsection with respect to minority populations.

[**SEC. 379A. STUDY BY THE GENERAL ACCOUNTING OFFICE.**

[(a) IN GENERAL.—The Comptroller General]

STUDY BY GENERAL ACCOUNTING OFFICE

SEC. 1813. (a) IN GENERAL.—The Comptroller General of the United States shall [conduct a study that evaluates—

[(1) the costs and benefits of the search process for an unrelated bone marrow donor among different marrow donor registries;

[(2) the extent to which marrow donor registries protect donor confidentiality;

[(3) the relationship between the Registry, individual marow donor centers, and other marrow donor registries;

[(4) the effectiveness and appropriateness of policies and procedures of marrow donor centers, marrow transplant centers, and marrow donor registries, including—

[(A) the process of donor recruitment, including the policy of asking each donor whether the donor would want to donate more than one time;

[(B) the maintenance and updating of donor files; and

[(C) the policy of initially typing donors for A/B antigens only instead of initially typing for both A/B and D/R antigens;

[(5) the ability of the marrow donor registries to incorporate changes in medical research and clinical practice; and

[(6) the costs associated with tissue typing.] *conduct a study for the purpose of—*

(1) assessing the extent to which the program carried out under section 1811 maintains the confidentiality of the identity of individuals who are enrolled with the Registry;

(2) assessing the extent to which such individuals cooperate with the Registry when the Registry requests the individuals to undergo supplemental testing regarding the donation of bone marrow;

(3) assessing, in the case of such individuals who have been determined to be medically appropriate donors of bone marrow for the patients involved, the extent to which such individuals are willing to make a donation of bone marrow;

(4) assessing the extent to which activities carried out pursuant to section 1811(k) provide information to the individuals involved that is sufficient for the individuals to make informed decisions regarding the donation of bone marrow;

(5) assessing the extent to which the case management services provided under section 1811(j)(3) are effective in assisting patients in receiving the transplants involved;

(6) developing recommendations on improving the program of the Registry, including proposals to increase the number of transplants with successful outcomes while maintaining the confidentiality of the identity of the individuals authorizing the donations of bone marrow;

(7) assessing the extent to which efforts to recruit minority individuals to enroll in the Registry have been successful;

(8) assessing, in the case of minority individuals who have been medically referred to receive a transplant of bone marrow, the measures that should be implemented to ensure that the Registry provides for such individuals a probability of locating a biologically unrelated, medically appropriate donor that is reasonably equivalent to the probability that exists with respect to Caucasian individuals who have been so referred; and

(9) assessing the extent to which the fees imposed by transplant centers with respect to the search for a donor of bone marrow, when considered in light of the fees imposed by the Registry, constitute a significant obstacle to individuals in obtaining a transplant of bone marrow.

(b) REPORT.—Not later than [1 year after the date of enactment of this part] *2 years after the date of the enactment of the Organ and Bone Marrow Transplantation Amendments of 1993*, the Comptroller General shall complete the study required under subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and

Human Resources of the Senate a report describing the findings made by the study and recommendations for legislative reform.

PART C—GENERAL PROVISIONS

AUTHORIZATION OF APPROPRIATIONS

SEC. 1821. For the purpose of carrying out this title (other than section 1801(a)(1)), there are authorized to be appropriated $20,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

*   *   *   *   *   *   *

ADDITIONAL VIEWS OF HON. MIKE BILIRAKIS

Although I support H.R. 2659, the Organ and Bone Marrow Transplantation Amendments of 1993, I continue to be concerned about the current organ allocation system and the obvious movement away from the original intent of Congress. When it created the National Organ Transplant Act, the Congress emphasized the need for a national list.

During both the subcommittee and full committee markup sessions, I withdrew amendments due to apparent lack of support that would have required that the medical status of the patient and the viability of the organ be the primary factors considered when making decisions on the distribution and transplantation of an organ, with no consideration being given to geographic areas of location of the organ or the donee.

Currently, transplants are conducted on patients regionally. Where a patient lives or where a patient is registered for a transplant are key. It doesn't matter if the operation is medically necessary—what matters is where the patient is located at the time the organ becomes available.

For example, an organ becomes available in San Diego and there are two individuals who could use that organ. One is in San Diego and registered with the local transplant center. This person has been categorized by doctors as a "status one," which means the person is not in dire need of a transplant—this person can work regularly, function fairly well on a daily basis, even play golf.

The second person is located in Dallas, TX. He is hospitalized and has been categorized by doctors as a "status four," meaning the person is in the hospital intensive care unit and will die if not given a transplant.

The person in San Diego will receive the transplant because he lives in the area and is registered with the local transplant center. In the meantime, the seriously ill patient, where a transplant can mean life, does not receive the transplant because he is not in the region where the organ is available.

The committee chose to require the Secretary of Health and Human Services to conduct a study on the feasibility, fairness, and enforceability of allocating organs in the United States based solely upon the clinical need of the patient involved and the viability of the organ involved, with no consideration given to the geographic area in which the transplant is to be performed or the geographic area in which the donation of the organ is made. Although this is definitely a step in the right direction, sick people will continue to die merely because of UNOS-created geographic boundaries.

This member is hopeful that the Secretary will do what the committee would not—require the program to operate closer to the congressional intent when the legislation was enacted in 1984.

MICHAEL BILIRAKIS.

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–273

MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND FOR SUNDRY INDEPENDENT AGENCIES, BOARDS, COMMISSIONS, CORPORATIONS, AND OFFICES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1994, AND FOR OTHER PURPOSES

OCTOBER 4, 1993.—Ordered to be printed

Mr. STOKES, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2491]

The Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2491) "making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1994, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 5, 6, 7, 17, 21, 27, 29, 36, 41, 53, 54, 58, 71, 72, 75, 80, 87, 88, 91, 94, 95, 96, 99, 102, 107, 108, 109, 110, 111, 114, 118, 124, 126, 132, and 135.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 3, 9, 10, 11, 13, 14, 20, 22, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, 39, 40, 42, 43, 46, 47, 48, 49, 50, 51, 56, 60, 64, 65, 66, 70, 74, 78, 82, 83, 92, 93, 97, 98, 103, 104, 105, 106, 112, 115, 117, 119, 125, 128, 130, 131, and 134, and agree to the same.

Amendment numbered 1:

That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$15,622,452,000*; and the Senate agree to the same.

Amendment numbered 4:

That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment, as follows:

72–803

Restore the matter stricken by said amendment, amended as follows:

In lieu of "$10,000,000" named in said amendment, insert: *$8,000,000*; and the Senate agree to the same.

Amendment numbered 8:

That the House recede from its disagreement to the amendment of the Senate numbered 8, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$826,749,000*; and the Senate agree to the same.

Amendment numbered 12:

That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment, insert: *$28,000,000*; and the Senate agree to the same.

Amendment numbered 15:

That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following:

For the HOME investment partnerships program, as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101–625), as amended, $1,275,000,000, to remain available until expended.

And the Senate agree to the same.

Amendment numbered 16:

That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$9,312,900,000*; and the Senate agree to the same.

Amendment numbered 19:

That the House recede from its disagreement to the amendment of the Senate numbered 19, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$263,000,000*; and the Senate agree to the same.

Amendment numbered 23:

That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$1,326,865,000*; and the Senate agree to the same.

Amendment numbered 37:

That the House recede from its disagreement to the amendment of the Senate numbered 37, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

For contracts with and payments to public housing agencies and nonprofit corporations for congregate service programs, $6,267,000, to remain available until September 30, 1995, in ac-

cordance with the provisions of the Congregate Services Act of 1978, as amended:

For contracts with and payments to public housing agencies and nonprofit corporations for congregate services programs under section 802 of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101–625), $18,733,000, to remain available until September 30, 1995.

And the Senate agree to the same.

Amendment numbered 44:

That the House recede from its disagreement to the amendment of the Senate numbered 44, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$115,000,000*; and the Senate agree to the same.

Amendment numbered 45:

That the House recede from its disagreement to the amendment of the Senate numbered 45, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$334,000,000*; and the Senate agree to the same.

Amendment numbered 52:

That the House recede from its disagreement to the amendment of the Senate numbered 52, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

Indian Housing

INDIAN HOUSING LOAN GUARANTEE FUND

For the cost (as defined in section 502 of the Congressional Budget Act of 1974) of guaranteed loans authorized by section 184 of the Housing and Community Development Act of 1992 (106 Stat. 3739), $1,000,000. Such funds shall be available to subsidize guarantees of total loan principal in an amount not to exceed $25,000,000.

And the Senate agree to the same.

Amendment numbered 55:

That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$916,963,000*; and the Senate agree to the same.

Amendment numbered 59:

That the House recede from its disagreement to the amendment of the Senate numbered 59, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following: *: Provided further, That not more than $5,000,000 of the amounts made available under this heading may be used for personnel compensation and benefits*; and the Senate agree to the same.

Amendment numbered 61:

That the House recede from its disagreement to the amendment of the Senate numbered 61, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following:

ADMINISTRATIVE PROVISION

None of the funds provided under this title to the Department of Housing and Urban Development, which are obligated to State or local governments or to housing finance agencies or other public or quasi-public housing agencies, shall be used to indemnify contractors or subcontractors of the government or agency against costs associated with judgments of infringement of intellectual property rights.

And the Senate agree to the same.

Amendment numbered 62:

That the House recede from its disagreement to the amendment of the Senate numbered 62, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$20,211,000*; and the Senate agree to the same.

Amendment numbered 63:

That the House recede from its disagreement to the amendment of the Senate numbered 63, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended as follows:

In lieu of the sum named in said amendment, insert: *$2,500,000*; and the Senate agree to the same.

Amendment numbered 67:

That the House recede from its disagreement to the amendment of the Senate numbered 67, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$9,159,000*; and the Senate agree to the same.

Amendment numbered 68:

That the House recede from its disagreement to the amendment of the Senate numbered 68, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$338,701,000*; and the Senate agree to the same.

Amendment numbered 69:

That the House recede from its disagreement to the amendment of the Senate numbered 69, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *: Provided, That not more than $50,600,000 of these funds shall be available for procurement of laboratory equipment, supplies, and other operating expenses in support of research and development*; and the Senate agree to the same.

Amendment numbered 73:

That the House recede from its disagreement to the amendment of the Senate numbered 73, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$850,625,000*; and the Senate agree to the same.

Amendment numbered 76:

That the House recede from its disagreement to the amendment of the Senate numbered 76, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$1,465,853,000*; and the Senate agree to the same.

Amendment numbered 77:

That the House recede from its disagreement to the amendment of the Senate numbered 77, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$1,215,853,000*; and the Senate agree to the same.

Amendment numbered 79:

That the House recede from its disagreement to the amendment of the Senate numbered 79, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$67,036,000*; and the Senate agree to the same.

Amendment numbered 81:

That the House recede from its disagreement to the amendment of the Senate numbered 81, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following:

For necessary expenses for capitalization grants for State revolving funds to support water infrastructure financing, and to carry out the purposes of the Federal Water Pollution Control Act, as amended, and the Water Quality Act of 1987, $2,477,000,000, to remain available until expended, of which $500,000,000 shall not become available until May 31, 1994: Provided, That of the amount which becomes available on October 1, 1993, $1,817,000,000 shall be for making capitalization grants for State revolving funds; $22,000,000 shall be for making grants under section 104(b)(3) of the Federal Water Pollution Control Act, as amended; $80,000,000 shall be for making grants under section 319 of the Federal Water Pollution Control Act, as amended; and $58,000,000 shall be for section 510 of the Water Quality Act of 1987.

And the Senate agree to the same.

Amendment numbered 84:

That the House recede from its disagreement to the amendment of the Senate numbered 84, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following:

None of the funds provided in this Act may be used within the Environmental Protection Agency for any final action by the Administrator or her delegate for signing and publishing for promulgation of a rule concerning any new standard for radon in drinking water.

And the Senate agree to the same.

Amendment numbered 85:

That the House recede from its disagreement to the amendment of the Senate numbered 85, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following:

No funds appropriated by this Act may be used during fiscal year 1994 to enforce the requirements of section 211(m)(2) of the Clean Air Act that require fuel refiners, marketers, or persons who sell or dispense fuel to ultimate consumers in any carbon monoxide nonattainment area in Alaska to use methyl tertiary butyl ether (MTBE) to meet the oxygen requirements of that section.

And the Senate agree to the same.

Amendment numbered 86:

That the House recede from its disagreement to the amendment of the Senate numbered 86, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$4,450,000*; and the Senate agree to the same.

Amendment numbered 89:

That the House recede from its disagreement to the amendment of the Senate numbered 89, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following:

OFFICE OF NATIONAL SERVICE

For necessary expenses of the Office of National Service within the Office of Administration of the Executive Office of the President as authorized by 3 U.S.C. 107, $160,000: Provided, That not more than $50,000 shall be used for reimbursing detailees.

And the Senate agree to the same.

Amendment numbered 90:

That the House recede from its disagreement to the amendment of the Senate numbered 90, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following:

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses to continue functions assigned to the Council on Environmental Quality and Office of Environmental Quality pursuant to the National Environmental Policy Act of 1969, the Environmental Quality Improvement Act of 1970, and Reorganization Plan No. 1 of 1977, $375,000.

And the Senate agree to the same.

Amendment numbered 100:

That the House recede from its disagreement to the amendment of the Senate numbered 100, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$7,509,300,000, to remain available until September 30, 1995: Provided, That not to exceed $1,000,000 under this Act shall*

be available for the Towards Other Planetary Systems/High Resolution Microwave Survey program (also known as the Search for Extraterrestrial Intelligence project): Provided further, That of the funds provided under this heading, $1,946,000,000 is available only for the redesigned space station, of which (1) not to exceed $160,000,000 shall be for termination costs connected only with Space Station Freedom contracts, (2) not to exceed $172,000,000 shall be for space station operations and utilization capability development, and (3) not to exceed $99,000,000 shall be for supporting development; and the Senate agree to the same.

Amendment numbered 101:

That the House recede from its disagreement to the amendment of the Senate numbered 101, and agree to the same with an amendment, as follows:

In lieu of the matter proposed in said amendment, insert: *Provided further, That not more than $1,100,000,000 of the amounts made available under this heading for the redesigned space station may be obligated before March 31, 1994*; and the Senate agree to the same.

Amendment numbered 116:

That the House recede from its disagreement to the amendment of the Senate numbered 116, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$1,986,000,000*; and the Senate agree to the same.

Amendment numbered 120:

That the House recede from its disagreement to the amendment of the Senate numbered 120, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$100,000,000*; and the Senate agree to the same.

Amendment numbered 121:

That the House recede from its disagreement to the amendment of the Senate numbered 121, and agree to the same with an amendment, as follows:

In lieu of the matter proposed in said amendment, insert: *: Provided further, That none of the funds made available under this heading may be used to enter into a new charter or lease for the use of a research vessel refurbished or modernized in a foreign shipyard or of a newly-constructed research vessel built in a foreign shipyard*; and the Senate agree to the same.

Amendment numbered 122:

That the House recede from its disagreement to the amendment of the Senate numbered 122, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$1,500,000*; and the Senate agree to the same.

Amendment numbered 123:

That the House recede from its disagreement to the amendment of the Senate numbered 123, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$118,300,000*; and the Senate agree to the same.

Amendment numbered 127:

That the House recede from its disagreement to the amendment of the Senate numbered 127, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

NATIONAL SERVICE INITIATIVE

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the Corporation for National and Community Service in carrying out the programs, activities, and initiatives under the National and Community Service Act of 1990, as amended (Public Law 103–82) (hereinafter referred to as "the Act"), $370,000,000, to remain available until September 30, 1995, except as provided hereafter: Provided, That not more than $25,000,000 is available for administrative expenses authorized under section 501(a)(4) of the Act, of which not more than $11,000,000 shall be for administrative expenses for State commissions pursuant to section 126(a) of subtitle C of title I of the Act: Provided further, That not to exceed $10,000,000 made available under this heading shall be for subtitle E of title I of the Act: Provided further, That not more than $94,500,000, to remain available without fiscal year limitation, shall be transferred to the National Service Trust Fund for educational awards as authorized under subtitle D of title I of the Act: Provided further, That not more than $9,450,000 of the $94,500,000 made available for the National Service Trust Fund shall be for educational awards authorized under section 129(b) of subtitle C of title I of the Act: Provided further, That not more than $5,000,000 is available for the Points of Light Foundation as authorized under title III of the Act: Provided further, That not more than $15,000,000 shall be for activities under subtitle H of title I of the Act.

And the Senate agree to the same.

Amendment numbered 133:

That the House recede from its disagreement to the amendment of the Senate numbered 133, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$34,314,000*; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 18, 38, 57, 113, and 129.

LOUIS STOKES,
ALAN B. MOLLOHAN,
JIM CHAPMAN,
MARCY KAPTUR,
ESTEBAN E. TORRES,
RAY THORNTON,
WILLIAM H. NATCHER,
JERRY LEWIS,
TOM DELAY,
DEAN A. GALLO,
JOSEPH M. MCDADE,
Managers on the Part of the House.

BARBARA A. MIKULSKI,
PATRICK J. LEAHY,
J. BENNETT JOHNSTON,
FRANK R. LAUTENBERG,
J. ROBERT KERREY,
DIANNE FEINSTEIN,
ROBERT C. BYRD,
PHIL GRAMM,
ALFONSE D'AMATO,
CHRISTOPHER S. BOND,
CONRAD BURNS,
MARK O. HATFIELD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2491) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1994, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE I—DEPARTMENT OF VETERANS AFFAIRS

VETERANS HEALTH ADMINISTRATION

Amendment No. 1: Appropriates $15,622,452,000 for medical care, instead of $15,552,452,000 as proposed by the House and $15,637,452,000 as proposed by the Senate.

The conference agreement reflects the following changes from the budget estimate:

+$8,000,000 for homeless programs authorized by the Homeless Veterans Comprehensive Services Program Act of 1992. Language earmarking $8,000,000 for this purpose has been included in the bill as required by law. The conferees agree that the Secretary should have more discretion in allocating funds among the homeless programs and the VA should not expect to see funds earmarked in the bill next year.

+$4,000,000 for programs to address the needs of women veterans.

+$1,000,000 for neuroskeletal research, treatment, and services.

+$2,000,000 for new community-based and primary care outpatient clinics.

+$95,000,000 to reduce the equipment backlog.

+$2,000,000 for marriage and family counseling of veterans of the Persian Gulf War.

+$4,000,000 for post-traumatic stress disorder treatment activities.

+$1,000,000 for readjustment counseling centers.

+$1,500,000 for bedside telephone systems in VA hospitals.

+$1,500,000 for geriatrics and extended care through innovative, cost-effective, noninstitutional programs such as adult day care, hospital-based home care, and hospice care.

−$5,000,000 as a result of transferring headquarters' quality assurance activities to the medical administration and miscellaneous operating expenses account.

—$15,000,000 as a result of lower than estimated pharmaceutical costs.

—$120,000,000 due to lower than estimated average salary costs.

The conferees note that the Administration failed to request any resources for cost-of-living adjustments or locality pay in any of the salary accounts in this or any other bill. It was assumed that such requirements would be eliminated in the reconciliation package passed this summer. Because the Reconciliation Act did not change locality pay requirements, agencies carried in this bill will be faced with over $200,000,000 in additional costs. Approximately $130,000,000 of that amount will fall to the VA medical care account. Since the conferees were not able to provide additional resources to cover locality pay, agencies are expected to reprogram funds to meet this requirement within existing appropriations.

Amendment No. 2: Deletes language proposed by the House and stricken by the Senate earmarking $9,850,000,000 for personnel compensation and benefits costs. The conferees have agreed to delete the earmarking for salary funds but expect the VA to maintain the employment level at the budget request of 205,188.

Amendment No. 3: Delays the availability of $651,000,000 in the equipment and land and structures object classifications until August 1, 1994, as proposed by the Senate, instead of delaying the availability of $531,350,000 as proposed by the House.

Amendment No. 4: Restores language proposed by the House and stricken by the Senate earmarking $10,000,000 for new veterans homeless programs authorized by the Homeless Veterans Comprehensive Services Program Act of 1992, amended to change the amount to $8,000,000.

Amendment No. 5: Deletes language proposed by the Senate providing $500,000,000 for the National Health Care Reform Contingency Fund, contingent upon the enactment of health care reform legislation and a budget request designating the entire amount as an emergency requirement.

Amendment No. 6: Deletes language proposed by the Senate providing a $10,000,000 appropriation and $5,000,000 by transfer for a new health professionals education debt reduction program. The conferees agree to fund this program, when authorized, at the $10,000,000 level from the medical care account.

Amendment No. 7: Appropriates $68,500,000 for medical administration and miscellaneous operating expenses as proposed by the House, instead of $73,500,000 as proposed by the Senate.

Departmental Administration

Amendment No. 8: Appropriates $826,749,000 for general operating expenses, instead of $823,249,000 as proposed by the House and $828,249,000 as proposed by the Senate. The Committee of Conference is in agreement that the increase above the budget request be made available to reduce the mounting backlog of veterans benefits claims.

Amendment No. 9: Appropriates $369,000,000 for construction, major projects, as proposed by the Senate, instead of $322,793,000 as proposed by the House.

The conference agreement includes the following changes from the budget estimate:

+$31,000,000 for the clinical addition project at the Ann Arbor VA Medical Center. The conferees agree that this represents the final appropriation for this project.

+$3,500,000 for the joint project for the relocation of the medical school functions and facility renovations at the Mountain Home VA Medical Center.

+$3,300,000 for the medical advance planning fund.

+$12,300,000 for the medical design fund.

+$450,000 for the cemeterial advance planning fund.

+$550,000 for the cemeterial design fund.

+$4,000,000 for cemeterial site acquisition.

+$1,400,000 for the regional office design fund.

+$6,750,000 for a 60-bed nursing home care unit addition at the Prescott VA Medical Center.

+$16,000,000 for a 60-bed nursing home care unit at the Hawaii VA Medical Center.

+$4,000,000 for design of an outpatient addition and parking garage at the San Juan VA Medical Center.

−$45,543,000 from the working reserve. This amount, together with $30,227,000 proposed in the budget request will provide for a total of $75,770,000 from the working reserve for the 1994 construction program.

−$12,000,000 from asbestos abatement.

−$2,000,000 from hazardous substance abatement.

−$17,000,000 as a general reduction to be taken at the Secretary's discretion, except the Ann Arbor project, subject to normal reprogramming procedures.

Amendment No. 10: Deletes language proposed by the House and stricken by the Senate requiring a medical center director to approve that a construction project's design is acceptable from a patient care standpoint.

TITLE II—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

Amendment No. 11: Inserts technical change to the language citation as proposed by the Senate.

Amendment No. 12: Inserts language proposed by the Senate earmarking not more than $12,000,000 for the Youthbuild program, amended to change the amount to $28,000,000. This amount, together with $20,000,000 provided under severely distressed public housing projects program will provide a total of $48,000,000 for Youthbuild activities in fiscal year 1994.

Amendment No. 13: Deletes language proposed by the House and stricken by the Senate appropriating $1,250,000,000 for the HOME Investment Partnerships Program. Funding for the HOME program is provided in amendment numbered 15.

Amendment No. 14: Deletes language proposed by the House and stricken by the Senate appropriating $75,000,000 for the HOME Investment Partnerships Program for disaster assistance

for victims in Presidentially-declared disasters. Funds for this purpose were provided in a 1993 Supplemental Appropriations Act.

Amendment No. 15: Inserts language proposed by the Senate appropriating $1,275,000,000 for the HOME Investment Partnerships Program and limiting such funds for six activities, amended to delete the limitations. The House provided $1,250,000,000 for the HOME program in amendment numbered 13. The conferees agree that the increased minimum allocation authorized by section 217(b)(2)(B) shall be $500,000 per State in fiscal year 1994. The conferees also agree that if higher funding levels for community housing partnership activities and State and local housing strategies are authorized, such increases can be provided through normal reprogramming procedures.

Amendment No. 16: Appropriates $9,312,900,000 for annual contributions for assisted housing, instead of $9,192,900,000 as proposed by the House and $9,334,900,000 as proposed by the Senate. The conferees expect the Department and the Office of Management and Budget to adhere to the 1994 program detailed in the following table:

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING, FISCAL YEAR 1994—GROSS RESERVATIONS

	Units	Cost	Term	Budget authority
Recaptures	NA	NA	NA	$242,680,000
Carryover	NA	NA	NA	203,000,000
New authority	NA	NA	NA	9,312,900,000
Total available	NA	....	....	9,758,580,000
Public housing:				
Public housing	5,746	83,333	NA	478,800,000
MROP	1,255	95,000	NA	119,200,000
P.H. service coordinators (sec. 673)	NA	NA	NA	30,000,000
Indian housing	2,785	94,429	NA	263,000,000
Amendments	NA	NA	NA	62,262,000
Lease adjustments	NA	NA	NA	22,451,000
Modernization	NA	NA	NA	3,230,000,000
Subtotal, public housing	9,786	....	....	4,205,713,000
Section 8 and other:				
Elderly:				
Capital grants	[9,000]	57,874	NA	521,000,000
Rental assistance	9,000	3,540	20	637,000,000
Subtotal, elderly	9,000	....	....	1,158,000,000
Disabled:				
Capital grants	[3,000]	60,025	NA	180,000,000
Rental assistance	3,000	3,457	20	207,000,000
Subtotal, disabled	3,000	....	....	387,000,000
Service coordinators (secs. 671 and 677)	NA	NA	NA	22,000,000
Total, elderly/disabled	12,000	....	....	1,567,000,000
Service coordinators:				
Project-based (sec. 674)	NA	NA	NA	15,000,000
Tenant-based (sec. 675)	NA	NA	NA	5,000,000
Multifamily (sec. 676)	NA	NA	NA	10,000,000
Total, service coordinators	NA	NA	NA	30,000,000

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING, FISCAL YEAR 1994—GROSS RESERVATIONS—Continued

	Units	Cost	Term	Budget authority
Family self-sufficiency coordinators	NA	NA	NA	8,400,000
Incremental rental assistance	39,703	6,684	5	1,326,865,000
Moving to opportunity	[4,364]	7,527	5	[1] [171,250,000]
Public housing relocation/replacement	2,481	6,684	5	82,916,000
Foster child care	2,202	7,030	5	77,401,000
Family investment centers	NA	NA	NA	25,675,000
Litigation	NA	NA	NA	45,000,000
Property disposition	5,325	6,948	15	555,000,000
Loan management	3,775	4,961	5	93,650,000
Preservation	33,330	NA	NA	541,000,000
Sec. 23 conversions	200	3,960	5	3,960,000
Housing opportunities for persons with AIDS	888	7,030	5	156,000,000
Lead-based paint	NA	NA	NA	150,000,000
Sec. 8 amendments	NA	....	....	900,000,000
Subtotal, sec. 8 and other	99,904	....	....	5,562,867,000
Post 1979 sec. 8 residual receipts	NA	....	....	(10,000,000)
Total, annual contributions	109,690	....	....	9,758,580,000
Incremental	63,324	....	....	3,869,066,000

[1] Includes counseling.

Amendment No. 17: Provides for the use of $242,680,000 of prior year assisted housing funds recaptured in 1994 as proposed by the House, instead of $242,000,000 as proposed by the Senate.

Amendment No. 18: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate providing for the use of up to $203,000,000 in carryover funds recaptured during fiscal year 1992 as a result of the conversion of section 202 direct loans to capital grants.

Amendment No. 19: Earmarks $263,000,000 for Indian housing, instead of $257,320,000 as proposed by the House and $268,000,000 as proposed by the Senate.

Amendment No. 20: Earmarks $598,000,000 for public housing as proposed by the Senate, instead of $400,000,000 as proposed by the House.

Amendment No. 21: Deletes language proposed by the Senate earmarking not more than 20 percent of the $598,000,000 provided for public housing for major reconstruction of obsolete public housing projects. The conferees agree that the Department should set aside the full authorization of 20 percent for the major reconstruction of obsolete public housing projects.

Amendment No. 22: Earmarks $3,230,000,000 for the public housing modernization program as proposed by the Senate, instead of $3,100,000,000 as proposed by the House. The Committee of Conference is in agreement that funding of the choice in management program should be deferred until the 1993 program awards can be evaluated.

Amendment No. 23: Earmarks $1,326,865,000 for rental assistance units (section 8 certificates and vouchers), instead of $1,381,518,000 as proposed by the House and $873,139,000 as proposed by the Senate. The conferees agree that this amount includes $164,250,000 for the moving to opportunity program and

$7,000,000 for the moving to opportunity counseling program. In addition, the conferees urge the Department to make 700 voucher units available for the HUD–VA supported housing project for homeless veterans.

The conferees agree that the Department should submit a reprogramming request for the use of section 8 certificates in connection with the use of pension funds upon enactment of the proper authorization.

Amendment No. 24: Inserts technical language proposed by the Senate clarifying the cite for the housing voucher program.

Amendment No. 25: Earmarks $900,000,000 for amendments to section 8 contracts (other than for section 202 projects) as proposed by the Senate, instead of $1,228,997,000 as proposed by the House.

Amendment No. 26: Earmarks $541,000,000 for the preservation program as proposed by the Senate, instead of $599,559,000 as proposed by the House.

Amendment No. 27: Restores language proposed by the House and stricken by the Senate establishing administrative fees for new incremental assistance units at 8.2 percent, the rate authorized by law. The conferees are concerned that some public housing authorities may be utilizing savings from administrative fees as offsets for shortfalls in operating subsidies. The current performance funding system formula does not adequately address all the costs incurred by the public housing authorities. The Department is urged to consider revising the PFS formula and to reflect all costs required to operate and maintain public and Indian housing projects.

Amendment No. 28: Earmarks $156,000,000 for housing opportunities for persons with AIDS as proposed by the Senate, instead of $125,000,000 as proposed by the House.

Amendment No. 29: Earmarks $150,000,000 for grants to States and local governments for the lead-based paint hazard reduction program as proposed by the House, instead of $250,000,000 as proposed by the Senate.

Amendment No. 30: Inserts technical correction to the language as proposed by the Senate.

Amendment No. 31: Earmarks $1,158,000,000 for the section 202 housing for the elderly program as proposed by the Senate, instead of $1,023,350,000 as proposed by the House.

Amendment No. 32: Earmarks $22,000,000 for elderly housing service coordinators as proposed by the Senate, instead of $15,855,000 as proposed by the House.

Amendment No. 33: Earmarks $387,000,000 for the section 811 disabled housing program as proposed by the Senate, instead of $445,373,000 as proposed by the House.

Amendment No. 34: Appropriates $4,558,106,000 for assistance for the renewal of expiring section 8 subsidy contracts as proposed by the Senate, instead of $5,558,106,000 as proposed by the House.

Amendment No. 35: Deletes language proposed by the House and stricken by the Senate requiring all contract renewals to be for a term of not less than five years.

Amendment No. 36: Restores language proposed by the House and stricken by the Senate appropriating $800,000,000 as an ad-

vanced 1995 appropriation for assistance for the renewal of expiring section 8 subsidy contracts.

Amendment No. 37: Appropriaties $6,267,000 for congregate services in accordance with the Congregate Services Act of 1978 and $18,733,000 for congregate services as authorized by section 802 of the Cranston-Gonzalez National Affordable Housing Act, instead of $6,267,000 in accordance with the 1978 Act as proposed by the House and a total of $25,000,000, including up to $6,267,000 in accordance with the 1978 Act and the balance as authorized by section 802 of the 1992 Act as proposed by the Senate.

Amendment No. 38: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following:

For the urban revitalization demonstration program under the third paragraph under the head "Homeownership and Opportunity for People Everywhere grants (HOPE grants)" in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, Public Law 102–389, 106 Stat. 1571, 1579, $778,240,000, to remain available until expended: Provided That notwithstanding the first proviso in such third paragraph, the Secretary shall have discretion to approve funding for more than fifteen applicants: Provided further, That no part of the foregoing amount that is used for the urban revitalization demonstration program shall be made available for an application that was not submitted to the Secretary by May 26, 1993: Provided further, That of the foregoing $778,240,000, the Secretary may use up to $2,500,000 for technical assistance under such urban revitalization demonstration, to be made available directly, or indirectly under contracts or grants, as appropriate: Provided further, That nothing in this paragraph shall prohibit the Secretary from conforming the program's standards and criteria set forth herein, with subsequent authorization legislation that may be enacted into law: Provided further, That of the $778,240,000 made available under this heading, $20,000,000 shall be made to eligible grantees under the urban revitalization demonstration program, to implement programs authorized under subtitle D of title IV, and of which, $10,000,000 shall be made for youth apprenticeship training activities for joint labor-management organizations pursuant to section 3(c)(2)(B) of the Housing and Urban Development Act of 1968, as amended.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees agree that $250,000 of the $10,000,000 provided for section 3 activities should be used for evaluation activities.

Amendment No. 39: Inserts language proposed by the Senate earmarking not more than $198,750,000 of the funding provided for the drug elimination grants for low-income housing account for housing authorities with more than 1,250 public housing units, not more than $53,000,000 for public housing authorities with less than 1,250 units, and not more than $13,250,000 for federally-assisted, privately-owned, low-income housing.

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The conferees agree that technical assistance and training for or on behalf of public housing agencies and resident organizations can be provided from within each of the above limitations. The conferees further agree that subsequent authorizing legislation for a replacement or modified program can adjust the above limitations to conform to such subsequent legislation.

Amendment No. 40: Deletes language proposed by the House and stricken by the Senate providing $48,000,000 for the Youthbuild program in a separate account.

The conference agreement provides a total of $48,000,000 for Youthbuild activities, including $28,000,000 in the HOPE grants account and $20,000,000 in the severely distressed public housing projects account.

Amendment No. 41: Appropriates $35,747,000 for the flexible subsidy fund as proposed by the House, instead of $41,000,000 as proposed by the Senate.

Amendment No. 42: Inserts language proposed by the Senate apportioning the availability of the FHA—general and special risk program account subsidy funds on a quarterly basis—$36,842,750 per quarter.

Amendment No. 43: Establishes the loan limitation for the Government National Mortgage Associations guarantees of mortgage-backed securities loan guarantee program account at $130,000,000,000 as proposed by the Senate, instead of $85,000,000,000 as proposed by the House.

HOMELESS ASSISTANCE

Amendment No. 44: Appropriates $115,000,000 for the emergency shelter grants program, instead of $151,350,000 as proposed by the House and $55,000,000 as proposed by the Senate.

Amendment No. 45: Appropriates $334,000,000 for the supportive housing program, instead of $319,968,000 as proposed by the House and $400,000,000 as proposed by the Senate.

Amendment No. 46: Appropriates $150,000,000 for the section 8 moderate rehabilitation single-room occupancy program as proposed by the Senate, instead of $107,835,000 as proposed by the House.

COMMUNITY PLANNING AND DEVELOPMENT

Amendment No. 47: Appropriates $4,400,000,000 for community development grants as proposed by the Senate, instead of $4,223,675,000 as proposed by the House.

The conferees urge HUD to pursue opportunities through the CDBG program to work cooperatively with Historically Black Colleges and Universities (HBCUs), and local entities of government to facilitate joint applications for facilities funds. The conferees believe that joint ventures between units of local government and HBCUs under the CDBG program can provide mutually beneficial opportunities to construct multiple use community service facilities on HBCU campuses that will benefit low income and subsidized housing residents, senior citizens, and the institution of higher education and its students.

Amendment No. 48: Earmarks $44,000,000 of community development grants for Indian tribes as proposed by the Senate, instead of $42,236,750 as proposed by the House.

Amendment No. 49: Earmarks $45,000,000 of community development grants for section 107 grants as proposed by the Senate, instead of $60,000,000 as proposed by the House. The conferees agree that no reductions are to be taken in the historically black colleges and universities or work study programs.

Amendment No. 50: Deletes language proposed by the House and stricken by the Senate appropriating $50,000,000 for community development grants to be used in areas affected by Hurricanes Andrew and Iniki and Typhoon Omar. Funds for this purpose were provided in a 1993 Supplemental Appropriations Act.

POLICY DEVELOPMENT AND RESEARCH

Amendment No. 51: Appropriates $35,000,000 for research and technology as proposed by the Senate, instead of $83,000,000 as proposed by the House.

The conference agreement reflects the following changes from the budget estimate:

+$250,000 for evaluation of the performance funding system.

+$3,000,000 as a grant for the Housing Assistance Council, including $1,000,000 for the loan fund.

+$500,000 as a grant for the National American Indian Housing Council.

+$250,000 for housing technology research as authorized by section 933 of the 1992 Housing Act.

−$4,000,000 as a general reduction, subject to normal reprogramming guidelines.

INDIAN HOUSING

Amendment No. 52: Restores language proposed by the House and stricken by the Senate appropriating $2,000,000 in program subsidies and establishing a loan limitation of $50,000,000 in the Indian housing loan guarantee fund, amended to appropriate $1,000,000 for program subsidies and establish a $25,000,000 loan limitation.

FAIR HOUSING AND EQUAL OPPORTUNITY

Amendment No. 53: Appropriates $25,000,000 for fair housing activities as proposed by the House, instead of $21,419,000 as proposed by the Senate.

Amendment No. 54: Restores language proposed by the House and stricken by the Senate earmarking $20,481,000 of the fair housing activities funds for the fair housing initiatives program.

MANAGEMENT AND ADMINISTRATION

Amendment No. 55: Appropriates $916,963,000 for salaries and expenses, instead of $918,463,000 as proposed by the House and $910,910,000 as proposed by the Senate. The conference agreement includes $1,500,000 and 15 FTEs for a new Office of Severely Distressed Public Housing.

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

Amendment No. 56: Appropriates $10,700,000 for salaries and expenses as proposed by the Senate, instead of $5,742,000 as proposed by the House.

Amendment No. 57: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate making a correction to the language citation.

Amendment No. 58: Deletes language proposed by the Senate that would ensure proportional assessment of 1993 fees between the two government-sponsored enterprises.

Amendment No. 59: Inserts language proposed by the Senate limiting the employment for the office to not more than 45 full-time equivalent positions, amended to instead limit to $5,000,000 the amount of funds available for personnel compensation and benefits costs. The conference agreement has deleted the limitation on employment. However, employment shall not exceed 45 full-time equivalent positions.

REVISION OF AMOUNTS FOR HUD

Amendment No. 60: Deletes language proposed by the House and stricken by the Senate that would transfer $10,000,000 from the research and technology account to the HOPE grants account.

ADMINISTRATIVE PROVISION

Amendment No. 61: Inserts language proposed by the Senate to limit funds made available to HUD which are obligated to State, local, public or quasi-public agencies from being used to indemnify contractors or subcontractors of such agencies against costs associated with judgments or allegations of infringement on intellectual property rights, amended to restrict the limitation to funds provided in the Act and deleting the reference to allegations.

TITLE III—INDEPENDENT AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

Amendment No. 62: Appropriates $20,211,000 for the salaries and expenses of the American Battle Monuments Commission, instead of $19,961,000 as proposed by the House and $20,461,000 as proposed by the Senate.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Amendment No. 63: Appropriates $2,500,000 for the Chemical Safety and Hazard Investigation Board, instead of $5,000,000 as proposed by the House and none as proposed by the Senate.

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Amendment No. 64: Deletes the center heading stricken by the Senate and proposed by the House, "Commission on National and Community Service".

Amendment No. 65: Appropriates no funds for the salaries and expenses of the Commission on National and Community Service

as proposed by the Senate, instead of $2,519,000 as proposed by the House.

Amendment No. 66: Appropriates no funds for the programs and activities of the Commission on National and Community Service as proposed by the Senate, instead of $105,000,000 as proposed by the House.

CONSUMER PRODUCT SAFETY COMMISSION

The conferees agree to the following changes to the budget request for the salaries and expenses of the Consumer Product Safety Commission:

+$100,000 and +1 FTE for high-priority, risk-based hazard assessment and reduction activities.

−$100,000 and −1 FTE from agency management.

This is instead of a $200,000 and 2 FTE shift in resources as proposed by the Senate and no shift in resources as proposed by the House.

COURT OF VETERANS APPEALS

Amendment No. 67: Appropriates $9,159,000 for the salaries and expenses of the Court of Veterans Appeals, instead of $9,040,000 as proposed by the House and $9,278,000 as proposed by the Senate.

ENVIRONMENTAL PROTECTION AGENCY

Amendment No. 68: Appropriates $338,701,000 for research and development, instead of $353,565,000 as proposed by the House and $328,565,000 as proposed by the Senate.

The conferees have reduced the research and development account by $14,864,000, including $4,000,000 from the massively parallel computer in the high-speed computing and communications program and $10,864,000 to be taken as a general reduction at the discretion of the Administrator, subject to normal reprogramming procedures. It is expected that most or all of this reduction will be taken from the other services/contracts object classification.

Amendment No. 69: Limits operating expenses to $50,600,000 as proposed by the Senate, instead of $10,200,000 as proposed by the House. For technical reasons, the language has been amended to delete the construction, alteration, repair, rehabilitation, and renovation of facilities language in this limitation.

This account does not include a change in definition of operating expenses, but retains the current definition. The conferees have chosen to leave the current definition in place because the research and development account includes unique characteristics in its program which make it difficult to categorize the administrative expenses in the same manner as in the abatement, control, and compliance account. Because the retention of the current administrative expenses is inconsistent with other EPA accounts, the Agency is directed to continue to track the administrative versus programmatic expenses of research and development as carried in other EPA accounts.

Amendment No. 70: Appropriates $1,352,535,000 for abatement, control, and compliance as proposed by the Senate, instead of $1,367,535,000 as proposed by the House.

The conferees are in agreement on the following changes to the budget request:

+$5,000,000 for the Clean Lakes program.

+$8,000,000 for rural water assistance activities. The distribution of funds should be made proportionally based on levels provided for the activities carried in the 1993 appropriation.

+$5,000,000 for public water system supervision grants.

+$4,000,000 for lead poisoning grants.

+$2,000,000 for pollution prevention grants.

+$2,000,000 to improve the scope and quality of the Toxics Release Inventory (TRI) in Pollution Prevention Act data.

+$2,000,000 to provide data and technical support for multimedia pollution prevention initiatives in permits, inspections, and enforcement actions.

+$500,000 for training grants to small, minority, and women-owned businesses and contractors. Of this amount, $200,000 is for lead-based paint abatement and other lead poisoning activities; $100,000 is for radon activities; $100,000 is for asbestos activities; and $100,000 is for underground storage tank cleanup.

+$375,000 for Long Island Sound program activities.

+$1,600,000 for the Great Lakes National Program office activities.

+$2,000,000 for upgrades to EPA's supercomputer.

+$1,500,000 for environmental education grants, to be awarded to minority institutions.

+$2,300,000 for technologies for a decontamination project in the New York/New Jersey Harbor.

+$750,000 for the Small Business Ombudsman program.

+$375,000 for the Grand Canyon Visibility Transport Commission.

+$2,500,000 for Indian multimedia grants.

+$750,000 for toxic remediation activities.

+$185,000 for water quality protection for the Florida Keys Marine Sanctuary.

+$750,000 for the National Estuaries Program.

+$350,000 for EPA's Water Conservation Task Force.

+$500,000 for the small town environmental planning program.

+$300,000 for grants to states for state technical assistance programs under the Pollution Prevention Act of 1990.

+$1,300,000 for the wastewater operator training grant program.

+$2,000,000 for alternative wastewater treatment technologies.

+$1,700,000 for academic training and education.

+$2,600,000 for air quality activities authorized under section 103 of the Clean Air Act.

+$1,750,000 for Lake Onondaga.

+$2,000,000 for Lake Champlain.

+$250,000 for interstate air pollution control activities.

+$1,000,000 for a study by the National Academy of Public Administration. The conferees have provided funds for this study to

review the proper distribution of resources within the Agency. It should include a review of risk assessment as stated in Senate Report 103–137 and examine the effectiveness of the Agency's organizational structure in furthering better environmental priorities. The NAPA study should address risk as well as other variables which may be factored into resource allocation.

The conferees expect that this report will be completed in the timeframe set forth in the Senate report. Prioritization of environmental goals is needed as Congress begins to reauthorize several major environmental statues. In addition to the National Academy of Sciences, NAPA is urged to work with EPA's Risk Assessment and Management Commission, which was established to investigate the policy implications and appropriate uses of risk assessment. Finally, NAPA is expected to work with the Committees on Appropriations in establishing the framework and goals of this review.

+$500,000 for toxicological research.

+$500,000 for research on high altitude engine testing.

+$700,000 for acid deposition research of the Adirondack Mountains.

+$500,000 for the Mickey Leland National Urban Air Toxics Research Center.

+$400,000 for clean alternative fuels research.

+$500,000 for research on the zebra mussel.

+$800,000 for continued neurotoxicity research efforts.

+$350,000 for continued indoor air research.

+$900,000 for drinking water research, of which $450,000 is for health effects and $450,000 is for disinfection by-products research. The conferees encourage the participation and cost-sharing of the water supply community in this crucial research.

+$2,000,000 for monitoring and improving air quality in regions along the U.S./Mexican border.

+$150,000 for Class I visibility air studies.

+$1,700,000 for the liquefied gaseous fuels spill test facility.

+$1,800,000 for research on environmental equity issues.

+$400,000 for solar energy pollution prevention and solar detoxification technology development activities.

+$800,000 for air toxic metals research.

+$500,000 for global and stratospheric ozone mitigation research programs.

+$2,000,000 for encouraging competitive research in rural states.

−$1,350,000 from international activities.

−$5,000,000 from the "green" programs.

−$1,000,000 from the green companies initiative.

−$7,000,000 from the Montreal Protocol facilitation fund.

−$9,000,000 from administrative expenses.

−$61,485,000 as a general reduction from contracts, to be taken at the discretion of the Administrator, subject to normal reprogramming procedures.

The conferees expect the Agency to work with the Committees on Appropriations in determining the proper allowanceholder within the Agency with regard to the various Congressional directives.

Funds for water quality improvement activities are now included under the water infrastructure account within the amount provided for water quality agreements.

Because the conferees were faced with tight fiscal constraints and numerous high priority environmental problems as well as for technical reasons, funds have not been included for asbestos. More than $350,000,000 has been provided to date in the abatement of asbestos in schools. The conferees are in agreement that a study of the remaining hazards of asbestos and the relative risk involved should be conducted, as directed by the Senate in its report accompanying this bill.

With regard to ongoing highway construction projects, the EPA is encouraged to work in conjunction with the Army Corps of Engineers and other federal agencies to expedite approval of necessary permits. Should additional information be considered necessary to augment any existing environmental impact statements, the Agency should move expeditiously to review all supplemental materials.

Amendment No. 71: Limits funds available for operating expenses to $283,000,000 for abatement, control, and compliance as proposed by the House, instead of $280,000,000 as proposed by the Senate.

Amendment No. 72: Deletes language proposed by the Senate providing funds to subsidize direct loans for asbestos and the implementation of asbestos activities to be derived from the unobligated balances of the Agency.

Amendment No. 73: Appropriates $850,625,000 for program and research operations, instead of $859,170,000 as proposed by the House and $841,000,000 as proposed by the Senate.

The Committee of Conference is in agreement on the following changes to the budget request:

+$250,000 for the Office of Small and Disadvantaged Business Utilization.

+$1,000,000 for new initiatives including activities under the Waste Isolation Pilot Plant Land Withdrawal Act (WIPP), lead poisoning, enforcement, and water infrastructure programs.

−$1,000,000 from the Office of International Activities.

−$100,000 from the program management element of the Office of Prevention, Pesticides, and Toxic Substances.

−$8,695,000 as a general reduction, to be taken at the discretion of the Administrator, subject to normal reprogramming guidelines. It is not the intent of the conferees to exempt those program areas that have had specific reductions taken from this general reduction.

Amendment No. 74: Deletes language proposed by the House and stricken by the Senate providing for an administrative expense ceiling in the Office of Inspector General. Although no administrative expense ceiling has been included under the Inspector General's account, the Agency is directed to track its administrative expenses in this account. It is expected that for IG activities, the Agency will use the global definition of administrative expenses carried in other EPA accounts.

Amendment No. 75: Provides $18,000,000 for buildings and facilities as proposed by the House, instead of $12,000,000 as proposed by the Senate. The conferees are in agreement that funds

should be provided for headquarters relocation buildout expenses as well as funds for the continued design of the Research Triangle Park laboratory facility.

Amendment No. 76: Provides $1,465,853,000 for the Hazardous Substance Superfund, instead of $1,416,100,000 as proposed by the House and $1,496,400,000 as proposed by the Senate.

The conferees are in agreement on the following changes from the budget request: +$25,000,000 for National Institute of Environmental Health Sciences (NIEHS) basic research grants.

+25,000,000 for the Agency for Toxic Substances and Disease Registry (ATSDR). Of this amount, $3,000,000 is for the continued study of human health impacts of contaminated fish and $1,000,000 is for air monitoring activities. ATSDR is encouraged to continue to enhance and expand its cooperative programs focusing on establishing substance specific investigations on data gaps that exist among 130 profiled substances required to be studied by CERCLA.

+2,500,000 for the Gulf Coast Hazardous Substance Research Center.

+300,000 for training grants to small, minority, and women-owned businesses and contractors.

+3,500,000 for minority academic institutions under the University Hazardous Substance Research Centers grant program.

−$42,000,000 from administrative expenses. It should be noted that in addition to the funds provided for administrative expenses for Superfund, the Agency estimates that at least $13,000,000 in carryover funds will be available for expenditure in this account. The level provided reflects a change in definition of administrative expenses to make it similar to those in the other EPA trust fund accounts and, to the extent possible, the abatement, control, and compliance account. Activities which are administrative in nature are now included under the ceiling rather than in the programmatic account. As the budget becomes more constrained, it is important to have better accountability of all funds. This revised definition will properly track administrative expenses which had formerly been carried with little oversight in the programmatic component of the program.

The conferees understand the complexity and difficulty of implementing this change in a short time period, but expect that most issues will be resolved within this fiscal year. The conferees expect further refinements will be made to the initial definition and direct the Agency to report, as needed, on any further statement of definition.

−$44,847,000 as a general reduction, to be taken at the discretion of the Administrator. This reduction is subject to the normal reprogramming guidelines.

Under the Agency's Superfund administrative improvements initiative, several procedures have been designed to expedite the current process. While the conferees are supportive of such an initiative, these efforts should in no way hinder the listing of sites on the Superfund national priority list. The Agency should continue its normal procedures under Superfund rules and regulations, including the listing of Superfund sites if warranted by the administrative record.

Amendment No. 77: Provides $1,215,853,000 to be derived from the Hazardous Substance Superfund, instead of $1,246,400,000 as proposed by the Senate and $1,206,100,000 as proposed by the House.

Amendment No. 78: Provides $250,000,000 to be derived from general revenues as proposed by the Senate, instead of $210,000,000 as proposed by the House.

Amendment No. 79: Provides $67,036,000 to the Agency for Toxic Substances and Disease Registry, instead of $64,036,000 as proposed by the House and $69,036,000 as proposed by the Senate.

Amendment No. 80: Limits funds available for administrative expenses to $280,000,000 as proposed by the House, instead of $240,000,000 as proposed by the Senate.

Amendment No. 81: Appropriates $2,477,000,000 for water infrastructure/state revolving funds as proposed by the House instead of $2,500,000,000 as proposed by the Senate. In addition, the Committee of Conference has agreed that of the amount provided, $500,000,000 shall not become available until May 31, 1994. The conferees have also agreed that of the amount made available upon enactment, $1,817,000,000 are for making capitalization grants for state revolving funds.

Further, of the funds provided for activities under the Federal Water Pollution Control Act and the Water Quality Act, $22,000,000 is for making grants under section 104(b)(3) (water quality agreements); $80,000,000 is for making grants under section 319 (nonpoint source pollution grants); and $58,000,000 is for section 510 of the Water Quality Act of 1987. While the conferees have agreed to the language proposed by the Senate, the phrase "and other related wastewater activities," has been deleted.

It is the intent of the conferees that of the $1,817,000,000 provided for making capitalization grants for state revolving funds, $599,000,000 is for drinking water state revolving funds. It is expected that these funds will be held in reserve until such time that they may be authorized. Once authorized, the Committees on Appropriations will entertain a reprogramming request by the Administrator.

It is also the intent of the conferees that the $500,000,000 which is not available until May 31, 1994 is to support water infrastructure financing of hardship communities. These funds have been set aside until projects are authorized for this purpose. For technical reasons, the conferees have been unable to extend the deadline for authorization of these funds beyond May 31, 1994. At this time, it is uncertain whether authorization will be completed by the end of May. Therefore, the conferees intend to recommend extending this deadline to a later date in 1994 in the next available appropriations vehicle.

Amendment No. 82: Inserts language proposed by the Senate providing for the heading, "Administrative Provisions".

Amendment No. 83: Inserts language proposed by the Senate to prohibit the use of funds for activities related to the classification of dried hops as a processed commodity.

Amendment No. 84: Inserts language proposed by the Senate to prohibit the use of funds to promulgate, carry out, or enforce regulations concerning radionuclides. This language has been

amended to limit the prohibition of the use of funds for promulgation of a final rule concerning a new standard for radon in drinking water.

This provision is intended to preclude the promulgation of a new radon standard. Existing rules and proposed and final rules for other than radon would not be affected. EPA could promulgate the non-radon provisions of the pending rulemaking as required by the court. It is not intended to affect the Agency's actions concerning the final development of such a rule for such promulgation under the applicable provisions of law.

Amendment No. 85: Inserts language proposed by the Senate which prohibits the use of funds by EPA to regulate fuel additives in certain instances. This language has been amended to narrow the scope of the provision.

The purpose of this limitation on appropriations for the EPA is to deal with an alleged health problem in Alaska said to be caused by the use of methyl tertiary butyl ether (MTBE) in the carbon monoxide non-attainment areas of Alaska. The limitation precludes enforcement of section 211(m)(2) of the Clean Air Act (CAA) against marketers, refiners, or distributors of gasoline to require use of oxygenated substances. The conferees intend that this be a one year limitation and that during this period, the State of Alaska and EPA jointly fund, with the assistance of the refiners and producers, studies by the EPA to resolve any uncertainties regarding such health effects of oxygenated fuels in Alaska. The Office of Research and Development at the EPA believes that additional research on oxygenates would be useful and oxygenated fuels should be investigated before being introduced into commercial application. This limitation does not relieve Alaska of its responsibilities under the CAA.

Executive Office of the President

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Amendment No. 86: Appropriates $4,450,000 for the Office of Science and Technology Policy within the Executive Office of the President, instead of $4,200,000 as proposed by the House and $4,700,000 as proposed by the Senate.

Amendment No. 87: Restores language proposed by the House and stricken by the Senate requiring that the Office of Science and Technology Policy reimburse other agencies for not less than half of the personnel compensation of detailees.

Amendment No. 88: Deletes language proposed by the Senate limiting the number of detailees assigned to the Office of Science and Technology Policy to six.

The conferees direct the Office of Science and Technology Policy to hire no more than six detailees.

OFFICE OF NATIONAL SERVICE

Amendment No. 89: Inserts language proposed by the Senate providing $160,000 for the salaries and expenses of the Office of National Service within the Executive Office of the President. This is amended to limit reimbursements for detailees at $50,000 and eliminate a provision requiring the Office of National Service to

pay other agencies for not less than half of the cost of detailees. The conferees direct the Office of National Service to pay for not less than 50 percent of the cost of personnel compensation for all detailees.

Council on Environmental Quality and Office of Environmental Quality

Amendment No. 90: Appropriates $375,000 to the Council on Environmental Quality as proposed by the Senate instead of none as proposed by the House. The language is amended to delete the transfer of these funds from the program and research operations account of the Environmental Protection Agency. The conferees have instead provided a direct appropriation to this account.

Federal Emergency Management Agency

Amendment No. 91: Deletes language proposed by the Senate providing an additional $400,000,000 in contingency funding for the disaster relief account. Currently, the Agency has approximately $400,000,000 in contingency funding. This level should be sufficient to cover any unusually large increase in disaster relief activities until such time that the Congress could provide supplemental funding.

Amendment No. 92: Appropriates $160,409,000 for salaries and expenses as proposed by the Senate, instead of $164,239,000 as proposed by the House.

The Committee of Conference is in agreement on the following changes to the budget request:

−$1,000,000 from travel.

−$4,107,000 as a general reduction, to be taken at the discretion of the Director, subject to normal reprogramming procedures.

Amendment No. 93: Inserts language proposed by the Senate making a technical correction to a citation as proposed by the House.

Amendment No. 94: Appropriates $212,960,000 for emergency management planning and assistance as proposed by the House, instead of $215,000,000 as proposed by the Senate.

The conferees are in agreement on the following changes to the budget request:

+$2,000,000 for emergency management assistance grants.

+$1,000,000 for section 305(a) grants authorized by Superfund Amendments and Reauthorization Act (SARA), title III.

+$7,000,000 for "other state and local program" grants.

−$20,000,000 as a general reduction, to be taken at the discretion of the Director, subject to normal reprogramming procedures.

Amendment No. 95: Restores center heading as proposed by the House and stricken by the Senate to include only one administrative provision.

Amendment No 96: Deletes language proposed by the Senate prohibiting the expenditure of funds for the chauffeuring of employees.

Department of Health and Human Services

OFFICE OF CONSUMER AFFAIRS

Amendment No. 97: Inserts language proposed by the Senate providing that none of the funds appropriated to the Office of Consumer Affairs may be used for other activities within the Department of Health and Human Services.

Interagency Council on the Homeless

Amendment No. 98: Deletes language proposed by the House and stricken by the Senate appropriating $910,000 for salaries and expenses of the Interagency Council on the Homeless. The conferees agree that all responsibilities should be transferred to the Department of Housing and Urban Development. The conferees note that field activities have never been funded by the Council, rather such support is provided on a nonreimbursable basis.

National Aeronautics and Space Administration

Amendment No. 99: Deletes rescission center heading proposed by the Senate.

Amendment No. 100: Appropriates $7,509,300,000 for research and development, instead of $7,475,400,000 as proposed by the House and $7,544,400,000 as proposed by the Senate. In addition, the conferees have agreed to limit the total amount available for the redesigned space station to $1,946,000,000 as proposed by the Senate instead of $2,100,000,000 as proposed by the House. The House amount did not reflect refinements of the proposed amendment to the President's budget on the space station submitted in House Document 103–103, which allocated certain station-related costs to other portions of the NASA research and development account. When the reallocation of these activities is taken together, however, the total provided for space station activities, including payloads, is $2,100,000,000.

The conferees have also agreed to include two bill language provisions carried by both the House and Senate which limit space station operations and utilization capability development costs to $172,000,000 and supporting development costs to $99,000,000. The conferees have also agreed to include a limitation on space station funds as proposed by the Senate of $160,000,000 for termination costs. The limitation proposed by the House prohibiting the use of any funds for space station NASA headquarters level I support service contracts has not been included. However, in accordance with the agreement as outlined in the letter from NASA to the Committees dated August 9, 1984, and reaffirmed by letter on September 30, 1993, the conferees have agreed to "cap" any space station funds at zero that may be used for space station engineering integration contract activities and for space station technical and management information systems contract activities after December 1, 1993.

Finally, the conferees have agreed to include a provision proposed by the Senate and modified to limit to $1,000,000 any funds made available under this act for the Towards Other Planetary Systems/High Resolution Microwave Survey Program (also known

as the Search for Extraterrestrial Intelligence Project). The $1,000,000 included for this activity is available only for termination costs.

The conference agreement reflects the following changes from the budget request:

−$50,000,000 from support service contractors.

−$25,000,000 from space capability development payload operations.

−$35,000,000 from space capability development advanced programs. The conferees agree that none of the reduction should be taken from the single-engine centaur or solid-propulsion integrity programs.

+$10,000,000 for the single-engine centaur project.

+$1,600,000 for the solid-propulsion integrity program.

−$25,000,000 from research operations support, including:

−$15,200,000 from space capability development research operations support,

−$3,100,000 from Earth Observing System research operations support, and

−$6,700,000 from aeronautical technology research operations support.

+$50,000,000 for space capability development space lab and payload operations for joint U.S./Russian activities.

+$50,000,000 for the Office of Space Science for joint U.S./Russian science missions.

−$19,000,000 from the Advanced X-Ray Astrophysics Facility (AXAF–S). The conferees direct NASA to use the remaining $16,900,000 to fly the principal AXAF/S instrument on the ASTRO–E satellite.

+$22,500,000 for physics and astronomy and planetary science mission operations and data analysis with a high priority afforded the Hubble Space Telescope repair mission.

+$64,300,000 for the Discovery program. These funds will provide $66,200,000 each in fiscal year 1994 for the Near Earth Asteroid Rendezvous (NEAR) and Mars Environmental Survey Pathfinder (MESUR) programs. The conferees agree that the $150,000,000 programmatic cost cap for these missions is based on 1992 dollars.

+$7,000,000 for the Earth Observing System Data Information System (EOSDIS) for programmatic reserves.

−$2,000,000 from the Earth Observing System "A" platform.

−$13,000,000 from the Consortium for International Earth Science Information Network (CIESIN). The committee of conference concurs with the agreement reached in the Senate on the CIESIN project. That agreement makes available $5,000,000 of fiscal year 1994 funds to establish CIESIN as a Distributed, Active Archive Center (DAAC) for socioeconomic activities within the EOSDIS program. The conferees note that approximately $13,000,000 of fiscal year 1993 funds will be available for a total 1994 program level of $18,000,000. The conferees further expect that given CIESIN's new status as a DAAC, an annual budget of $6,000,000 per annum beginning in fiscal year 1995 will be established by NASA. The conferees also expect that beginning in fiscal year 1995, the National Science Foundation will establish, through

a competitive process, a Center for the Human Dimensions of Climate Change at a level of approximately $6,000,000 annually.

−$20,000,000 from the new technology initiative science data purchases program.

−$11,300,000 from the Towards Other Planetary Systems/High Resolution Microwave Survey program. A total of $1,000,000 has been made available only for termination costs.

−$5,800,000 from the Advanced Launch Technology program. The conferees agree that the $20,000,000 made available for this activity shall be allocated as follows: $8,000,000 for development of a low-cost booster program; $5,000,000 for advanced propulsion development; and $7,000,000 for hybrid rocket technology.

+$15,000,000 for the flight and ground-based NASA/NIH protocol for microgravity science.

−$17,500,000 from the small satellite technology program.

−$40,000,000 from commercial use of space. Included within the funds made available are the following assumptions:

$14,500,000 for the commercial experiment transporter (COMET),

$45,000,000 for the commercial mid-deck augmentation module (CMAM), and

a $9,400,000 general reduction to be applied at the agency's discretion subject to the normal reprogramming procedures except that none of the reduction shall be applied to direct grants to centers for the commercial development of space.

The conferees recognize that the reduction of $21,500,000 in the CMAM program could cause difficult financial and technical adjustments. The conferees have agreed, therefore, after further consultations with NASA, to include an advanced fiscal year 1995 appropriation of $40,000,000 in a 1994 supplemental bill. This amount will essentially meet all 1994 and 1995 NASA commitments to the CMAM program.

−$28,700,000 as a general reduction from space research and technology to be taken subject to the normal reprogramming procedures.

−$12,000,000 as a general reduction from aeronautical subsonic research to be taken subject to the normal reprogramming procedures.

+$10,000,000 for the high-speed civil transport program.

+$1,000,000 for an assessment of whether a National Institute of Aeronautics should be established within NASA.

−$80,000,000 from the National Aerospace Plane. The conferees have made this reduction without prejudice owing to the severe budget constraints faced by all domestic discretionary programs. The NASP objective is to demonstrate the technology required to permit the Nation to develop reusable, single-stage-to-orbit (SSTO) vehicles with air-breathing primary propulsion as well as horizontal take-off and landing. The conferees continue to believe that this goal, although technically difficult, would represent an exceptional breakthrough for American aeronautics. In that context, again recognizing the goal of single-stage-to-orbit capability, the conferees urge that NASA examine carefully the importance of proceeding with the NASP project, and if it believes NASP can contribute significantly to meeting this goal, propose a reprogramming

of funds to ensure the proper NASA role in the joint NASA/Department of Defense NASP program.

+$8,000,000 for minority university research, including $2,500,000 for Hispanic-serving institutions; $5,000,000 for historically black colleges; and $500,000 for model institutions of excellence. The conferees urge that NASA work closely with the Environmental Protection Agency and the National Science Foundation to expand the number of historically black colleges and universities research centers in earth and space science, engineering, and mathematics, including high-performance supercomputing and scientific visualization.

+$3,000,000 for educational technology.

+$1,000,000 for an assessment of whether a National Institute of Space Science should be established within NASA.

+$1,500,000 for the Office of Advanced Concepts and Technology for cooperative efforts by the Department of Defense in artificial intelligence and software reuse.

+$2,500,000 for the Advanced Communication Technology Satellite (ACTS) program.

−$5,000,000 from the LANDSAT program.

−$5,000,000 from space capability development engineering and technical base.

−$5,000,000 from spacelab payload mission management activities.

−$5,200,000 from Life Science Flight Experiments.

−$24,000,000 from the Mars Observer program. The conferees are disappointed in the recent loss of the Mars Observer. A total of $10,200,000 has been included for a possible 1995 or 1996 reflight of the Mars mission. Based on an early review of comparative costs, it appears that a reflight of existing Mars observer instruments would represent achieving the most science at the lowest cost—particularly when launch requirements are included.

Finally, the conferees support the recommendation carried in the Senate report (103–137) to reconvene the Augustine Commission panel to update its findings in light of new budget realities and to evaluate how successfully NASA has implemented its recommendations.

Amendment No. 101: Inserts language proposed by the Senate, amended to establish a funding limitation for space station by a date certain.

The conferees have agreed that of the $2,100,000,000 provided for the space station program, not to exceed $1,100,000,000 shall be available before March 31, 1994. The conferees have further agreed to "cap" the space station program at $1,100,000,000 in accordance with the agreement as outlined in the letter from NASA to the Committees dated August 9, 1984, and reaffirmed by letter to the Committees on September 30, 1993.

The conferees have agreed to cap the space station program in view of the continuing concern that any joint U.S./Russian space station option not compromise the longstanding goals of the American program. Fundamentally, the conferees believe that any Russian participation should enhance and not enable the space station. In that context it is important that a U.S.-led "human-tended" station with sufficient power to operate it should be the first phase of

any international space station. The conferees welcome Russian participation including the use of the so-called Russian "tug" for guidance and navigation, the Russian Soyuz as a crew rescue vehicle, and other Russian docking and rendezvous technology and hardware. The conferees believe that over the coming four to six weeks a final configuration incorporating any Russian participation must be resolved in order to proceed with an amended critical design review of space station Alpha. Continued delay or uncertainty regarding what space station the United States will build can only exacerbate the problem of expending $8,000,000 a day for a program that remains undefined in terms of its final configuration. The conferees hope that the United States and Russia can agree, along with the other international partners, on an *acceptable* final configuration that will permit the lifting of the "cap" described above.

Amendment No. 102: Deletes language proposed by the Senate limiting funds for any space station with a user capability less than that available for space station Freedom.

Amendment No. 103: Inserts language proposed by the Senate limiting funds made available for the space station program to enter into contracts with the Republic of Russia.

Amendment No. 104: Inserts language proposed by the Senate limiting funds under the research and development account to $100,000,000 for activities for cooperative space ventures between the United States and the Republic of Russia including $50,000,000 for space transportation capability development activities and $50,000,000 for space science activities other than life sciences.

Amendment No. 105: Inserts language proposed by the Senate prohibiting the use of any of the $100,000,000 provided for cooperative agreements with the Republic of Russia until after December 15, 1993.

Amendment No. 106: Inserts language proposed by the Senate providing that no funds be made available under the research and development account to pay or reimburse the Department of Defense for any expenses connected with a planetary exploration mission.

Amendment No. 107: Deletes language proposed by the Senate limiting the dollars available for the mission to planet earth activities and for a socioeconomic data active archive center.

Amendment No. 108: Deletes language proposed by the Senate prohibiting the use of earth observing system data information funds for the construction of non-NASA facilities. The conferees have deleted this provision without prejudice. NASA is directed, however, to provide no funds for the construction of non-NASA facilities including the reimbursement of construction costs through annual data archive center operation budgets. The conferees further agree that all prior interagency agreements that would have permitted this are considered null and void and that facility costs should be borne by the non-NASA agencies directly.

Amendment No. 109: Deletes language proposed by the Senate limiting funds available for space research and technology activities.

Amendment No. 110: Appropriates $4,878,400,000 for space flight, control and data communications as proposed by the House instead of $4,892,900,000 as proposed by the Senate. The conference agreement reflects the following changes from the budget request:

−$30,000,000 from structural spares. The conferees also agree that because of ongoing budget constraints, and the possibility of additional reductions that may have to be incurred under the shuttle production activity owning to potential future rescissions, the advanced turbo fuel pump development program should not be activated in fiscal year 1994. The 1994 budget includes no funds for the restart of the advanced fuel pump program. Although the conferees are pleased with the progress that has been made in the past nine months to correct development problems encountered with the advanced liquid oxygen turbo pump, given the increasingly limited resources available for new programs, it would not be prudent to begin a commitment to this activity.

−$2,000,000 from program support.

−$155,500,000 from the Advanced Solid Rocket Motor program.

The conferees have included $124,900,000 in fiscal year 1994 for the Advanced Solid Rocket Motor program. This is a reduction of $155,500,000 below the budget request of $280,400,000. The conferees regret that the full request for the ASRM program could not be accommodated within the severely constrained allocations available to the subcommittee—particularly in view of the more than one billion dollars that has been expended on the program to date, and also in view of the significant safety, payload, and manufacturing advantages gained with the ASRM development.

The Committee of Conference is aware, however, that NASA will soon make a final decision regarding the orbital inclination of the space station. If such decision places station in a 51.6 degree orbit to accommodate access from Russia, the shuttle will experience a significant degradation in lift capacity to station.

The conferees believe, therefore, that if the higher space station orbit is selected by NASA, the ASRM is clearly an *active and viable* option available to offset the loss of shuttle lift capacity. In that context, the conferees direct that NASA and the Administration determine if the ASRM is the *preferred* option to address the issue of diminished shuttle lift capacity *should* a higher space station orbit be selected. If such a determination is made, the conferees expect that NASA will submit a reprogramming by November 15, 1993 of such funds necessary to proceed with ASRM development.

If, however, NASA elects to choose an alternate approach to enhance shuttle lift capacity, then the funds provided ($124,900,000) for ASRM may be used only for termination and transferring the production of solid rocket motor nozzles and the refurbishment of solid rocket motor cases to the new ASRM production site located near Yellow Creek, Mississippi. To assure that such an option remains viable, the conferees have acceded to the Senate and restored the $32,600,000 requested For ASRM construction at Yellow Creek.

—$5,000,000 from launch and mission support.

—$200,000,000 from shuttle operations.

—$10,000,000 as a general roduction from launch services to be applied at the agency's discretion subject to the normal reprogramming procedures. The conferees are in agreement with the language contained in the House report (103–150) directing that NASA launch the AXAF–I mission on shuttle with an appropriate upper stage.

+$6,600,000 for the Discovery Near Earth Asteroid Rendezvous (NEAR) launch vehicle.

—$48,000,000 from the tracking and data relay satellite replacement new start. This reduction is made without prejudice. The conferees note that NASA has provided the historical "estimated need versus actual need" data on the TDRS system. It indicates that there has been a substantial over-estimate of future need for use of the system. Nevertheless, the Committee will entertain a reprogramming upon submission of data in the operating plan that outlines how the TDRSS will operate in conjunction with any Russian participation in the space station program.

—$11,000,000 as a general reduction from space communications, including a reduction of $8,600,000 from space communications operations activities at headquarters and at the NASA ground terminal.

—$500,000 from Mars Observer operations.

Amendment No. 111: Deletes center head proposed by the Senate.

Amendment No. 112: Appropriates $550,300,000 as proposed by the Senate instead of $512,700,000 as proposed by the House. The conferees agree that no funds provided under this heading may be used for the construction of a neutral buoyancy laboratory.

Amendment No. 113: Reported in technical disagreement. The managers on the part of the House will offer a motion to rocede and concur in the amendment of the Senate, including technical language pursuant to Public Law 102–486 concerning utility energy efficiency and water conservation cash rebates received by the National Aeronautics and Space Administration.

Amendment No. 114: Deletes language proposed by the Senate rescinding $10,000,000 of fiscal year 1993 funds provided for the Consortium for International Earth Science Information Network.

The conferees agree to fence $10,000,000 of 1993 CIESIN construction funds until the completion of the pending Inspector General report.

Amendment No. 115: Appropriates $1,635,508,000 as proposed by the Senate, instead of $1,637,500,000 as proposed by the House. The conference agreement makes the following changes to the budget request:

—$25,000,000 from space station and NASA-related employment. The May 1993 station employment level was estimated at 2,240 full-time positions. A 30 percent reduction from that level (the NASA goal) would equate to approximately 650 positions. The conferees expect that a part of that reduction will occur from closing NASA operations at the Reston Level II Space Station facility. The conferees further direct that total NASA end of year fiscal year 1994 employment shall not exceed 22,900 FTE.

−$14,492,000 as a general reduction to be taken at the agency's discretion subject to the normal reprogramming procedures.

The conferees note that as NASA reduces its programmatic activities, including personnel, it is important that the agency ensure that it does not lose sight of its responsibility to demonstrate that the cutting edge of technology reflect the full ethnic, cultural and gender diversity of the United States. The small and disadvantaged business goals and objectives should continue to reflect aggressive efforts to increase the full participation of targeted groups and contracting opportunities, 8(a) set-asides, and in training and research grants. The current goal of achieving a minority set-aside of eight percent of contract dollars should be maintained. Up to $48,400,000 of available funds may be used for minority university research and education programs in fiscal year 1994 with the intent of reaching a $101,000,000 investment level by fiscal year 1999.

The conferees also agree that up to $800,000 of available research and program management funds may be used for multicultural education and equal opportunity training programs over the next three fiscal years (1994–1996). In addition, $748,000 of available funds may be used for equal opportunity compliance activities and the processing and adjudication of matters of employment discrimination occurring under 29 CFR 1614.

The Committee of Conference agrees that in a subsequent legislative vehicle it will recommend a rescission to offset any mandatory "pay as you go" costs incurred as a result of NASA "early-out" legislation.

Finally, the conferees are concerned that the original purposes of operating plan changes have become increasingly distorted over the past three to four fiscal years. The operating plan is intended to accommodate unexpected and technical dollar change requirements in various NASA programs. It is *not and should not* be used as a vehicle for changing policy and programmatic decisions made in the conference report. The conferees expect, therefore, that except where specific reprogramming proposals may be recommended in the conference agreement, such as in the case of the NASP and ASRM programs, the operating plan adhere to those conditions for which it was originally employed.

National Science Foundation

Amendment No. 116: Appropriates $1,986,000,000 for the research and related activities of the National Science Foundation, instead of $2,045,000,000 as proposed by the House and $1,940,000,000 as proposed by the Senate.

The conferees agree with the following adjustments from the request by the Administration:

−$204,800,000 to be taken as a general reduction at the agency's discretion, subject to the normal reprogramming guidelines.

−$12,500,000 from activities connected with the Foundation's role in high-performance computing. The conferees direct the Foundation not to expend more funds on high-performance computing than it spent in fiscal year 1993 until it provides a written report to the Committees on Appropriations articulating specific and measurable goals in this area. This report must include timetables and milestones for achieving NSF's goals, and should describe how

these efforts relate to the Administration's national information infrastructure initiative.

−$6,500,000 from the acquisition of an arctic research vessel.

+$5,000,000 for a second round of funding for agile manufacturing.

The conferees agree that GAO complete a study on indirect costs consistent with the guidance in both House and Senate reports. GAO should report to both Committees on Appropriations concurrently.

Amendment No. 117: Inserts language proposed by the Senate prohibiting any of the funds provided for research and related activities from being used to acquire an arctic research vessel. The conferees have deferred further action on the arctic research vessel pending receipt of a report from the General Accounting Office on the costs and benefits associated with the various acquisition strategies (including lease, purchase, debt financing, and other mechanisms) which could be pursued by the NSF or its institutional operator.

Amendment No. 118: Deletes language proposed by the Senate prohibiting expenditures for the establishment of any new research centers in fiscal year 1994.

The conferees expect that beginning in fiscal year 1995, the National Science Foundation will establish, through a competitive process, a Center for the Human Dimensions of Climate Change at a level of approximately $6,000,000 annually.

Amendment No. 119: Inserts center heading proposed by the Senate, changing the account title from "Academic Research Facilities and Instrumentation" as proposed by the House to "Academic Research Infrastructure" as proposed by the Senate.

Amendment No. 120: Appropriates $100,000,000 for academic research infrastructure, instead of $55,000,000 as proposed by the House and $125,000,000 as proposed by the Senate.

The conferees note the great difficulty experienced by colleges and universities with significant populations of historically underrepresented groups in obtaining funding for research facilities and instruments. The conferees direct the Foundation to pay particular attention to the needs of these institutions when obligating funds under this title.

Amendment No. 121: Inserts language proposed by the Senate for United States Polar Research programs prohibiting the use of funds to refurbish, modernize, or build a research vessel in foreign shipyards. This is amended to reference vessels built in "a foreign shipyard", rather than vessels "not refurbished or modernized" or "not built in" the United States.

Education and Human Resources

The conferees agree to the following changes from the budget request for the education and human resources account:

+$7,500,000 for the Experimental Program to Stimulate Competitive Research (EPSCoR).

+$10,000,000 for science and advanced technology grants to community colleges.

+$1,000,000 for minority summer science camps.

+$1,500,000 for systemic reform in rural areas. This program should complement the urban systemic initiative.

−$3,500,000 as a general reduction, taken at the Agency's discretion, subject to the normal reprogramming guidelines.

−$3,000,000 from curriculum development.

Amendment No. 122: Appropriates $1,500,000 for the Critical Technologies Institute, instead of $1,000,000 as proposed by the House and $2,000,000 as proposed by the Senate.

The conferees agree to the following changes to the budget request for the Critical Technologies Institute:

+$250,000 for activities focused on the development of performance goals for federal investments in science and technology.

+$250,000 for a grant to the National Academy of Public Administration [NAPA] to review NSF's various research centers, including, but not limited to, its science and technology, engineering, and supercomputer centers.

Amendment No. 123: Appropriates $118,300,000 for the salaries and expenses of the National Science Foundation, instead of $120,800,000 as proposed by the House and $115,500,000 as proposed by the Senate.

Amendment No. 124: Restores the center heading proposed by the House and deleted by the Senate naming the account "National Science Foundation headquarters relocation". Deletes center heading proposed by the Senate naming the account "National Science Foundation headquarters relocation and related activities".

Amendment No. 125: Deletes language stricken by the Senate and proposed by the House allowing funds for this activity to remain available until expended.

Amendment No. 126: Deletes language proposed by the Senate allowing the Foundation to use resources appropriated under this heading to pay for rent.

National Service Initiative

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Amendment No. 127: Appropriates $370,000,000 for the Corporation for National and Community Service as proposed by the Senate, instead of no appropriation as proposed by the House. In addition, the conferees agree to several limitations as proposed by the Senate but not proposed by the House. They are:

$14,000,000 limit on administrative expenses for the Corporation,

$11,000,000 limit on administrative expenses for State commissions,

$94,500,000 limit on appropriations to the National Service Trust Fund,

$5,000,000 limit on payments to the Points of Light Foundation, and

$15,000,000 limit on subtitle H activities.

The conferees agree to amend two limitations proposed by the Senate but not proposed by the House by agreeing to:

$9,450,000 limit on educational awards for VISTA volunteers, instead of a $4,725,000 limit on educational awards for VISTA vol-

unteers as proposed by the Senate and no limit as proposed by the House, and

$10,000,000 limit on subtitle E activities, instead of a prohibition on expenditures for this purpose as proposed by the Senate and no limitation as proposed by the House.

The conferees did not agree to several limitations as proposed by the Senate but not proposed by the House. They are:

$3,000,000 limit on grants to Native American tribes,
$3,000,000 limit on grants to territories,
$9,500,000 limit on technical assistance,
$10,000,000 limit on disaster assistance,
$25,000,000 limit on transfers to other federal agencies,
$2,000,000 limit on programs for individuals with disabilities,
$11,000,000 limit on Summer of Service, and
$9,000,000 limit on Stafford loan forgiveness.

The conferees direct the Corporation to obligate no more than $180,500,000 for subtitle C activities and no more than $40,000,000 for subtitle B activities.

The conferees agree to the following overall allocation for the fiscal year 1994 appropriation:

Subtitle C activities	$180,500,000
National service trust	94,500,000
Service learning	40,000,000
Subtitle E activities	10,000,000
Corporation administrative expenses	14,000,000
State commission administrative expenses	11,000,000
Subtitle H activities	15,000,000
Points of Light Foundation	5,000,000
Total appropriation	370,000,000

The conferees agree that funds shall remain available until September 30, 1995, except appropriations for the National Service Trust, which shall remain available until expended, as proposed by the Senate but not by the House.

The conferees agree that funds appropriated under subtitle E of title I may be used for educational awards, and that the Committees on Appropriations will review the limitation on educational awards for VISTA volunteers at mid-year and may adjust it in a subsequent legislative vehicle, if justified.

The conferees agree that up to $12,000,000 of subtitle C funds may be used for technical assistance.

The conferees agree that the Corporation may not establish more than 50 full-time equivalent positions in fiscal year 1994. The Committees on Appropriations will consider some increases above that level if justified by a detailed operating plan.

NEIGHBORHOOD REINVESTMENT CORPORATION

Amendment No. 128: Appropriates $32,000,000 for the payment to the Neighborhood Reinvestment Corporation as proposed by the Senate, instead of $30,476,000 as proposed by the House.

The conferees agree with the following adjustments to the request by the Administration:

+$3,024,000 for equity capital activities, to be allocated, where possible, to assist with the distressed elements of the federally as-

sisted housing inventory, including RTC and FHA properties where strong NeighborWorks organizations are currently in place.

+$500,000 for developing fully integrated service delivery programs for NHS communities modeled on the criteria of the HOPE 6 Program.

+$500,000 for the development of a demonstration program for national service with the NHS network, consistent with the requirements of the National and Community Service Trust Act of 1993.

SELECTIVE SERVICE SYSTEM

SALARIES AND EXPENSES

Amendment No. 129: Reported in disagreement.

TITLE IV—CORPORATIONS

FEDERAL DEPOSIT INSURANCE CORPORATION

Amendment No. 130: Deletes language proposed by the House and stricken by the Senate providing such sums as may be necessary for the payment of insurance losses under the Savings Association Insurance Fund.

Amendment No. 131: Appropriates $1,171,000,000 for the FSLIC Resolution Fund as proposed by the Senate, instead of $1,326,000,000 as proposed by the House.

Amendment No. 132: Restores language proposed by the House and stricken by the Senate appropriating $7,000,000 for the FDIC affordable housing program and allowing the FDIC the flexibility to waive certain provisions of section 40 of the Federal Deposit Insurance Act in order to maximize the efficient use of available funds.

RESOLUTION TRUST CORPORATION

Amendment No. 133: Appropriates $34,314,000 for the Office of Inspection General of the Resolution Trust Corporation, instead of $34,046,000 as proposed by the House and $34,582,000 as proposed by the Senate.

TITLE V—GENERAL PROVISIONS

Amendment No. 134: Limits consultants pay to not to exceed the rate paid for executive level IV as proposed by the Senate, instead of the maximum rate paid for GS–18 as proposed by the House.

Amendment No. 135: Restores language proposed by the House and stricken by the Senate prohibiting the expenditure of funds in the Act in violation of the Buy American Act.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1994 recommended by the Committee of Conference, with comparisons to the fiscal year 1993 amount, the 1994 budget estimates, and the House and Senate bills for 1994 follow:

New budget (obligational) authority, fiscal year 1993 .... $89,557,933,000

Budget estimates of new (obligational) authority, fiscal year 1994	**89,268,383,032**
House bill, fiscal year 1994	**87,946,121,032**
Senate bill, fiscal year 1994	**87,931,529,032**
Conference agreement, fiscal year 1994	**87,690,272,032**
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1993	**−1,857,660,968**
Budget estimates of new (obligational) authority, fiscal year 1994	**−1,568,111,000**
House bill, 1994	**−245,849,000**
Senate bill, 1994	**−231,257,000**

LOUIS STOKES,
ALAN B. MOLLOHAN,
JIM CHAPMAN,
MARCY KAPTUR,
ESTEBAN E. TORRES,
RAY THORNTON,
WILLIAM H. NATCHER,
JERRY LEWIS,
TOM DELAY,
DEAN A. GALLO,
JOSEPH M. MCDADE,
Managers on the Part of the House.

BARBARA A. MIKULSKI,
PATRICK J. LEAHY,
J. BENNETT JOHNSTON,
FRANK R. LAUTENBERG,
J. ROBERT KERREY,
DIANNE FEINSTEIN,
ROBERT C. BYRD,
PHIL GRAMM,
ALFONSE D'AMATO,
CHRISTOPHER S. BOND,
CONRAD BURNS,
MARK O. HATFIELD,
Managers on the Part of the Senate.

103D CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT 103–274

WAIVING POINTS OF ORDER AGAINST THE CONFERENCE REPORT TO ACCOMPANY H.R. 2491

OCTOBER 5, 1993.—Referred to the House Calendar and ordered to be printed

Ms. SLAUGHTER, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 268]

The Committee on Rules, having had under consideration House Resolution 268 by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

79–008

103D CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 103-275

MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES, FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1994, AND FOR OTHER PURPOSES

OCTOBER 5, 1993.—Ordered to be printed

Mr. NATCHER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2518]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2518) "making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1994, and for other purposes," having met after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 13, 21, 26, 31, 39, 67, 71, 72, 109, 116, 118, 121, 125, 126, 127, 134, and 135.

That the House recede from its disagreement to the amendments of the Senate numbered 5, 8, 9, 10, 12, 14, 16, 17, 18, 19, 20, 22, 30, 50, 52, 61, 63, 73, 78, 82, 87, 90, 101, 112, 113, 114, 115, 119, and 122, and agree to the same.

Amendment numbered 1:

That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$4,615,801,000*; and the Senate agree to the same.

Amendment numbered 2:

That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$64,218,000*; and the Senate agree to the same.

Amendment numbered 3:

72-849

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$85,576,000*; and the Senate agree to the same.

Amendment numbered 4:

That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$5,579,000*; and the Senate agree to the same.

Amendment numbered 7:

That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$1,122,000*; and the Senate agree to the same.

Amendment numbered 27:

That the House recede from its disagreement to the amendment of the Senate numbered 27, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$2,926,381,000*; and the Senate agree to the same.

Amendment numbered 32:

That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$2,051,132,000*; and the Senate agree to the same.

Amendment numbered 33:

That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$331,915,000*; and the Senate agree to the same.

Amendment numbered 35:

That the House recede from its disagreement to the amendment of the Senate numbered 35, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$128,701,000*; and the Senate agree to the same.

Amendment numbered 36:

That the House recede from its disagreement to the amendment of the Senate numbered 36, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$21,677,000*; and the Senate agree to the same.

Amendment numbered 37:

That the House recede from its disagreement to the amendment of the Senate numbered 37, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$119,981,000*; and the Senate agree to the same.

Amendment numbered 38:

That the House recede from its disagreement to the amendment of the Senate numbered 38, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$233,605,000*; and the Senate agree to the same.

Amendment numbered 40:

That the House recede from its disagreement to the amendment of the Senate numbered 40, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$111,039,000*; and the Senate agree to the same.

Amendment numbered 42:

That the House recede from its disagreement to the amendment of the Senate numbered 42, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$3,750,000*; and the Senate agree to the same.

Amendment numbered 43:

That the House recede from its disagreement to the amendment of the Senate numbered 43, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$69,917,000*; and the Senate agree to the same.

Amendment numbered 44:

That the House recede from its disagreement to the amendment of the Senate numbered 44, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$135,409,000*; and the Senate agree to the same.

Amendment numbered 46:

That the House recede from its disagreement to the amendment of the Senate numbered 46, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$2,189,960,000*; and the Senate agree to the same.

Amendment numbered 47:

That the House recede from its disagreement to the amendment of the Senate numbered 47, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$2,189,960,000*; and the Senate agree to the same.

Amendment numbered 55:

That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$300,000,000*; and the Senate agree to the same.

Amendment numbered 62:

That the House recede from its disagreement to the amendment of the Senate numbered 62, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$4,237,050,000*; and the Senate agree to the same.

Amendment numbered 64:

That the House recede from its disagreement to the amendment of the Senate numbered 64, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$871,282,000*; and the Senate agree to the same.

Amendment numbered 66:

That the House recede from its disagreement to the amendment of the Senate numbered 66, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$63,590,000*; and the Senate agree to the same.

Amendment numbered 75:

That the House recede from its disagreement to the amendment of the Senate numbered 75, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$6,924,497,000*; and the Senate agree to the same.

Amendment numbered 76:

That the House recede from its disagreement to the amendment of the Senate numbered 76, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$6,896,052,000*; and the Senate agree to the same.

Amendment numbered 77:

That the House recede from its disagreement to the amendment of the Senate numbered 77, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$5,642,000,000*; and the Senate agree to the same.

Amendment numbered 79:

That the House recede from its disagreement to the amendment of the Senate numbered 79, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$41,434,000*; and the Senate agree to the same.

Amendment numbered 80:

That the House recede from its disagreement to the amendment of the Senate numbered 80, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$91,373,000*; and the Senate agree to the same.

Amendment numbered 81:

That the House recede from its disagreement to the amendment of the Senate numbered 81, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$305,193,000*; and the Senate agree to the same.

Amendment numbered 83:

That the House recede from its disagreement to the amendment of the Senate numbered 83, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$798,208,000*; and the Senate agree to the same.

Amendment numbered 84:

That the House recede from its disagreement to the amendment of the Senate numbered 84, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$613,445,000*; and the Senate agree to the same.

Amendment numbered 85:

That the House recede from its disagreement to the amendment of the Senate numbered 85, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$123,129,000*; and the Senate agree to the same.

Amendment numbered 86:

That the House recede from its disagreement to the amendment of the Senate numbered 86, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$33,437,000*; and the Senate agree to the same.

Amendment numbered 88:

That the House recede from its disagreement to the amendment of the Senate numbered 88, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$1,376,659,000*; and the Senate agree to the same.

Amendment numbered 89:

That the House recede from its disagreement to the amendment of the Senate numbered 89, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$1,050,603,000*; and the Senate agree to the same.

Amendment numbered 91:

That the House recede from its disagreement to the amendment of the Senate numbered 91, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$250,998,000*; and the Senate agree to the same.

Amendment numbered 93:

That the House recede from its disagreement to the amendment of the Senate numbered 93, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$240,155,000*; and the Senate agree to the same.

Amendment numbered 94:

That the House recede from its disagreement to the amendment of the Senate numbered 94, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$36,431,000*; and the Senate agree to the same.

Amendment numbered 95:

That the House recede from its disagreement to the amendment of the Senate numbered 95, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$38,992,000*; and the Senate agree to the same.

Amendment numbered 96:

That the House recede from its disagreement to the amendment of the Senate numbered 96, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$3,108,702,000*; and the Senate agree to the same.

Amendment numbered 97:

That the House recede from its disagreement to the amendment of the Senate numbered 97, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$2,149,686,000*; and the Senate agree to the same.

Amendment numbered 98:

That the House recede from its disagreement to the amendment of the Senate numbered 98, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$339,257,000*; and the Senate agree to the same.

Amendment numbered 99:

That the House recede from its disagreement to the amendment of the Senate numbered 99, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$253,152,000*; and the Senate agree to the same.

Amendment numbered 100:

That the House recede from its disagreement to the amendment of the Senate numbered 100, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$116,878,000*; and the Senate agree to the same.

Amendment numbered 102:

That the House recede from its disagreement to the amendment of the Senate numbered 102, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$2,296,936,000*; and the Senate agree to the same.

Amendment numbered 103:

That the House recede from its disagreement to the amendment of the Senate numbered 103, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$78,435,000*; and the Senate agree to the same.

Amendment numbered 105:

That the House recede from its disagreement to the amendment of the Senate Numbered 105, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$1,481,183,000*; and the Senate agree to the same.

Amendment numbered 106:

That the House recede from its disagreement to the amendment of the Senate numbered 106, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$38,077,000*; and the Senate agree to the same.

Amendment numbered 107:

That the House recede from its disagreement to the amendment of the Senate numbered 107, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$23,455,000*; and the Senate agree to the same.

Amendment numbered 110:

That the House recede from its disagreement to the amendment of the Senate numbered 110, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$8,020,160,000*; and the Senate agree to the same.

Amendment numbered 128:

That the House recede from its disagreement to the amendment of the Senate numbered 128, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert: *$205,097,000*.

And the Senate agree to the same.

Amendment numbered 130:

That the House recede from its disagreement to the amendment of the Senate numbered 130, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$1,690,000*; and the Senate agree to the same.

Amendment numbered 131:

That the House recede from its disagreement to the amendment of the Senate numbered 131, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$8,657,000*; and the Senate agree to the same.

Amendment numbered 132:

That the House recede from its disagreement to the amendment of the Senate numbered 132, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

SEC. 507. No funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the "Buy American Act").

And the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 6, 11, 15, 23, 24, 25, 28, 29, 34, 41, 45, 48, 49, 51, 53, 54, 56, 57, 58, 59, 60, 65, 68, 69, 70, 74, 92, 104, 108, 111, 117, 120, 123, 124, 129, and 133.

WILLIAM H. NATCHER,
NEAL SMITH,
DAVID R. OBEY,
LOUIS STOKES,
STENY H. HOYER,
NANCY PELOSI,
NITA M. LOWEY,
JOSÉ E. SERRANO,
ROSA L. DELAURO,
JOHN EDWARD PORTER,
BILL YOUNG,
HELEN DELICH BENTLEY,
HENRY BONILLA,
JOSEPH M. MCDADE,
Managers on the Part of the House.

TOM HARKIN,
ROBERT C. BYRD,
ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
DALE BUMPERS,
HARRY REID,
HERB KOHL,
PATTY MURRAY,
ARLEN SPECTER,
MARK O. HATFIELD,
TED STEVENS,
THAD COCHRAN,
SLADE GORTON,
CONNIE MACK,
CHRISTOPHER S. BOND,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2518) making appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies, for the fiscal year ending September 30, 1994, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

TITLE I—DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

Amendment No. 1: Appropriates $4,615,801,000 instead of $4,943,181,000 as proposed by the House and $4,588,536,000 as proposed by the Senate.

The conference agreement includes $4,234,000 to continue the Samoan, Pacific Islander and Asian American employment and training initiative, including $3,234,000 to be allocated to the State of Hawaii, $2,970,000 for labor market information and $1,500,000 for microenterprise grants under title IV of JTPA. The conferees agree that the $12,537,000 provided for the McKinney homeless program includes $7,482,000 for the Employment and Training Administration and $5,055,000 for the Assistant Secretary for Veterans Employment and Training.

Amendment No. 2: Earmarks $64,218,000 for Native American job training instead of $61,871,000 as proposed by the House and $65,000,000 as proposed by the Senate.

Amendment No. 3: Earmarks $85,576,000 for migrants and seasonal farmworkers instead of $78,303,000 as proposed by the House and $88,000,000 as proposed by the Senate. The conferees are agreed that the farmworker housing program should be continued in its current form, with the understanding that grants may be awarded on a competitive basis; the agreement includes $3,000,000 for this program.

Amendment No. 4: Earmarks $5,579,000 for all activities conducted by and through the National Occupational Information Coordinating Committee instead of $5,357,000 as proposed by the House and $5,800,000 as proposed by the Senate.

Amendment No. 5: Earmarks $3,861,000 for rural concentrated employment programs as proposed by the Senate instead of $3,831,000 as proposed by the House.

Amendment No. 6: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the first sum named in said amendment, insert: *$206,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides an additional $206,000,000 for the summer youth employment program for the summer of 1994, instead of $300,000,000 as proposed by the House and $178,000,000 as proposed by the Senate. The agreement also provides for a separate appropriation of $50,000,000 for the school-to-work program to be available for obligation for the period October 1, 1993 through June 30, 1995.

With the amount appropriated in this bill for summer youth employment for program year 1993, it is the intent of the conferees to ensure that the Department of Labor has sufficient funds to maintain the program year 1992 participant level of 655,000 youths.

Amendment No. 7: Appropriates $1,122,000 for the National Center for the Workplace instead of $744,000 as proposed by the House and $1,500,000 as proposed by the Senate.

Amendment No. 8: Inserts separate appropriation of $750,000 for the Women in Apprenticeship and Nontraditional Occupations Act as proposed by the Senate. The House bill did not include a separate appropriation for this.

Amendment No. 9: Deletes language proposed by the House providing that certain summer youth employment funds shall be available for obligation for the period October 1, 1993 through June 30, 1994. This matter has been addressed under amendment number 6. Also deletes language proposed by the House that would have provided that funds are to be available for the period beginning October 1, 1993 to carry out the women in Apprenticeship and Nontraditional Occupations Act. This matter has been addressed under amendment number 8.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

Amendment No. 10: Appropriates $77,042,000 as proposed by the Senate instead of $69,542,000 as proposed by the House.

Amendment No. 11: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$3,376,617,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $9,140,000 for unemployment insurance automation grants and $9,000,000 for employment service automation grants.

Amendment No. 12: Earmarks $74,986,000 for activities under the Wagner-Peyser Act as proposed by the Senate instead of $67,486,000 as proposed by the House.

Amendment No. 13: Inserts unemployment workload threshold level of 3.28 million proposed by the House instead of 3.427 million as proposed by the Senate.

PENSION AND WELFARE BENEFITS ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 14: Appropriates $64,058,000 as proposed by the Senate instead of $64,408,000 as proposed by the House.

EMPLOYMENT STANDARDS ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 15: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *: Provided, That the Secretary of Labor is authorized to accept, retain and spend in the name of the Department of Labor all sums of money ordered to be paid to the Secretary of Labor, in accordance with the terms of the Consent Judgment in Civil Action No. 91–0027 of the United States District Court for the District of the Northern Mariana Islands (May 21, 1992)*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Inserts language proposed by the Senate that would authorize the Secretary of Labor to accept and spend funds received as a result of a consent judgment in U.S. District Court for the Northern Mariana Islands. Deletes language proposed by the Senate expressing the sense of the Congress that Members of Congress should participate on an equal basis with all other Americans in the health care system that results from health care reform legislation.

BLACK LUNG DISABILITY TRUST FUND

Amendment No. 16: Appropriates $1,002,175,000 as proposed by the Senate instead of $1,001,575,000 as proposed by the House.

Amendment No. 17: Earmarks $29,529,000 for transfer to the salaries and expenses account as proposed by the Senate instead of $28,929,000 as proposed by the House. The increase over the House bill is for the financing of an additional 39 FTE's to prevent the closings of the black lung field offices.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

Amendment No. 18: Appropriates $297,244,000 as proposed by the Senate instead of $294,640,000 as proposed by the House. The conference agreement includes $31,112,000 for the onsite consultation program.

Mine Safety and Health Administration

SALARIES AND EXPENSES

Amendment No. 19: Appropriates $195,002,000 as proposed by the Senate instead of $193,858,000 as proposed by the House.

Bureau of Labor Statistics

SALARIES AND EXPENSES

Amendment No. 20: Appropriates $282,018,000 as proposed by the Senate instead of $281,768,000 as proposed by the House. The conference agreement includes $250,000 for continuation of the BLS publication of the aircraft manufacturers employment cost index; this funding is provided for one additional year of publication, with the intent that the industry and interested Federal agencies cooperate in seeking any funding for subsequent fiscal years.

Amendment No. 21: Makes available $51,927,000 from the Unemployment Trust Fund as proposed by the House instead of $51,227,000 as proposed by the Senate.

Departmental Management

SALARIES AND EXPENSES

Amendment No. 22: Appropriates $143,127,000 as proposed by the Senate instead of $142,242,000 as proposed by the House.

WORKING CAPITAL FUND

Amendment No. 23: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

For expenses necessary during the fiscal year ending September 30, 1994, and each fiscal year thereafter, for the maintenance and operation of a comprehensive program of centralized services which the Secretary of Labor may prescribe and deem appropriate and advantageous to provide on a reimbursable basis under the provisions of the Economy Act (subject to prior notice to OMB) in the national office and field: Provided, That such fund shall be reimbursed in advance from funds available to agencies, bureaus, and offices for which such centralized services are performed at rates which will return in full cost of operations including services obtained through cooperative administrative services units under the Economy Act, including reserves for accrued annual leave, worker's compensation, depreciation of capitalized equipment, and amortization of ADP software and systems (either acquired or donated): Provided further, That funds received for services rendered to any entity or person for use of Departmental facilities, including associated utilities and security services, shall be credited to and merged with this fund.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes the Senate language with regard to the Working Capital Fund amended to make it permanent in nature.

General Provisions

Amendment No. 24: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert:

Sec. 102. None of the funds in the Employees' Compensation Fund under 5 U.S.C. 8147 shall be expended for payment of compensation, benefits, and expenses to any individual convicted of a violation of 18 U.S.C. 1920, or of any felony fraud related to the application for or receipt of benefits under subchapters I or III of chapter 81 of title 5, United States Code.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes language prohibiting the payment of benefits under the Federal Employees' Compensation Act to any individual who has been convicted of defrauding the program.

Amendment No. 25: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which prohibits the Secretary of Labor from implementing, during fiscal year 1994 only, certain Davis-Bacon "helper" regulations and certain proposed regulations concerning apprenticeship in the construction industry. The conferees have taken this action on a one-time basis and are agreed that any further action on this matter should be taken by the authorizing committees of jurisdiction.

TITLE II—DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HEALTH RESOURCES AND SERVICES

Amendment No. 26: Deletes a legal citation proposed by the Senate.

Amendment No. 27: Appropriates $2,926,381,000 instead of $2,833,588,000 as proposed by the House and $2,954,341,000 as proposed by the Senate.

Within the total provided for the health care for the homeless program, the conferees have included $3,250,000 to provide school-based primary health care services to homeless and at-risk youth.

The conferees support the continued efforts to establish a Statewide health care system and health scholarship program for Native Hawaiians. Of the funds made available, $450,000 is intended for the administration of Papa Ola Lokahi, and $700,000 is for the Native Hawaiian Health Care Scholarship Program to support a wide variety of health care disciplines, particularly nurse practitioners. The remaining funds are to be utilized for the operation of the five island health care systems.

The conferees intend that $1,500,000 of the funds made available under the Pacific Basin initiative be allocated to the Medical Officer Training Program.

If any funds are available under the Area Health Education Centers program to initiate any new core centers, the conferees encourage the agency to give consideration, among other factors, to applicants in States that demonstrate a strong financial commitment to Area Health Education Centers.

The conferees do not intend to require the Health Resources and Services Administration to revise its procedures for allocating fiscal year 1994 lending authority in the Health Education Assistance Loan Program.

Amendment No. 28: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which establishes a limitation on funds that may be used for the health centers malpractice claims fund.

VACCINE INJURY COMPENSATION PROGRAM TRUST FUND

Amendment No. 29: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $3,000,000 for administrative costs rather than $2,500,000 as proposed by the House.

VACCINE INJURY COMPENSATION

Amendment No. 30: Appropriates $110,000,000 as proposed by the Senate instead of $80,000,000 as proposed by the House.

CENTERS FOR DISEASE CONTROL AND PREVENTION

DISEASE CONTROL, RESEARCH, AND TRAINING

Amendment No. 31: Deletes a legal citation proposed by the Senate.

Amendment No. 32: Appropriates $2,051,132,000 instead of $1,910,182,000 as proposed by the House and $2,088,781,000 as proposed by the Senate.

The conference agreement includes sufficient funds to support the full cost of the Tuskegee reimbursement program within the sexually transmitted diseases grants and infertility programs.

The conferees commend the Centers for Disease Control and Prevention (CDC) for undertaking a comprehensive review of their HIV prevention activities and for initiating a process for community-level planning. Within the funds provided for HIV prevention programs, the conferees intend that the CDC have the flexibility to respond to the changing nature of the HIV epidemic by implementing administrative reforms. Meanwhile, the CDC is encouraged to continue the direct funding of community-based organizations until such time as comprehensive reforms are in place and evaluated.

The conference agreement includes $116,769,000 for tuberculosis control activities rather than $120,269,000 as proposed by the House and $106,269,000 as proposed by the Senate.

National Institutes of Health

NATIONAL CANCER INSTITUTE

The conferees encourage the Institute to provide grants to meet the important equipment and instrumentation needs in cancer research, with a particular emphasis on those emerging institutions of excellence so recognized with cancer center planning grant awards. The conferees believe it is of critical importance to provide for the unique needs of emerging institutions of excellence to enable them to attract the quality researchers necessary to build a highly competitive research institution.

The conferees intend that the Director of the Institute have the discretion in reviewing cancer research facilities construction needs to address excellent and outstanding projects with the funds provided in fiscal year 1994.

The conferees encourage the Institute to permit citizens of the State of Hawaii, and particularly Native Hawaiians, to participate in Federally-supported clinical trials.

NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

The conferees are encouraged by the progress that the Institute has made with respect to both sickle cell disease and bone marrow transplantation. The conferees encourage the Institute to continue to capitalize on the research opportunities it has created in these areas, including, for example, applying the new approaches of gene therapy and bone marrow transplants to curing sickle cell disease.

The conferees are pleased that the Director is moving ahead with the establishment of the National Center for Sleep Disorders Research and encourages support for the full range of Center activities.

NATIONAL INSTITUTE OF MENTAL HEALTH

The conferees remain concerned about suicide, particularly among youths, and are supportive of the suicide centers. The conferees strongly encourage the Institute to continue its commitment to basic and epidemiological research on potential causes and risk factors for suicide, as well as interventions to prevent suicide and suicidal behavior.

NATIONAL CENTER FOR RESEARCH RESOURCES

Amendment No. 33: Appropriates $331,915,000 instead of $328,915,000 as proposed by the House and $332,915,000 as proposed by the Senate.

Amendment No. 34: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum named in said amendment, insert: *$7,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement identifies $7,000,000 for construction of extramural facilities instead of $8,000,000 as proposed by the Senate. The House had no comparable provision. In accordance with the National Institutes of Health Revitalization Act of 1993, the conferees expect twenty-five percent of the extramural facilities construction funds appropriated to be awarded to institutions of emerging excellence.

NATIONAL CENTER FOR HUMAN GENOME RESEARCH

Amendment No. 35: Appropriates $128,701,000 instead of $119,030,000 as proposed by the House and $131,925,000 as proposed by the Senate.

JOHN E. FOGARTY INTERNATIONAL CENTER

Amendment No. 36: Appropriates $21,677,000 instead of $22,240,000 as proposed by the House and $19,988,000 as proposed by the Senate.

NATIONAL LIBRARY OF MEDICINE

Amendment No. 37: Appropriates $119,981,000 instead of $118,481,000 as proposed by the House and $120,481,000 as proposed by the Senate.

OFFICE OF THE DIRECTOR

(Including Transfer of Funds)

Amendment No. 38: Appropriates $233,605,000 instead of $224,746,000 as proposed by the House and $241,225,000 as proposed by the Senate.

Amendment No. 39: Deletes language proposed by the Senate earmarking $15,000,000 for a director's discretionary fund and directing that $12,000,000 of this amount be allocated for Decade of the Brain activities.

The conference agreement includes $7,500,000 for a director's discretionary fund instead of $15,000,000 as proposed by the Senate. The House bill did not include funds for this purpose. The amount agreed to will permit the Director to respond quickly to problems which emerge during the fiscal year without having to transfer funds from other priorities. The conferees note that the Office of the Director appropriation is unique within the National Institutes of Health in permitting full funding of the cost of scientific projects through the use of multiyear awards. The conferees expect the Director to use this authority for any initiatives which are undertaken within the discretionary fund. None of these funds are to be used to initiate projects requiring additional funding in future years without the formal approval of the House and Senate Committees on Appropriations through the normal reprogramming process. The conferees believe that the portion of this amount which should be allocated to Decade of the Brain activities should be determined by the Director after considering the full range of scientific needs at the National Institutes of Health. Accordingly, the conferees have not specified a funding level for Decade of the Brain activities.

The conference agreement also includes $3,505,000 for the Office of Alternative Medicine and $11,138,000 for the Office of Research on Women's Health.

The conferees are concerned about serious charges of racial discrimination and sexual harassment at the National Institutes of Health. The problem should be addressed and resolved. The conferees instruct the Secretary to submit progress reports on the resolution of this problem to the House and Senate committees semiannually with an initial report due not later than January 31, 1994.

BUILDINGS AND FACILITIES

Amendment No. 40: Appropriates $111,039,000 instead of $114,385,000 as proposed by the House and $101,000,000 as proposed by the Senate.

The conference agreement includes $27,500,000 to continue construction of the consolidated office building.

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES

Amendment No. 41: Reported in technical disagreement. The managers on the part of the House will offer a motion to rocede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$2,125,178,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 42: Limits the amount available for obligation pursuant to section 571 of the Public Health Service Act to $3,750,000 instead of $4,000,000 as proposed by the House and $3,000,000 as proposed by the Senate.

ASSISTANT SECRETARY FOR HEALTH

OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH

Amendment No. 43: Appropriates $69,917,000 instead of $68,758,000 as proposed by the House and $71,167,000 as proposed by the Senate.

The conferees direct the Department to allocate $70,000 to the General Services Administration to conduct an environmental assessment of the East Plaza of the Hubert Humphrey Building to determine the feasibility of that site for the National Museum of Health and Medicine.

AGENCY FOR HEALTH CARE POLICY AND RESEARCH

HEALTH CARE POLICY AND RESEARCH

Amendment No. 44: Appropriates $135,409,000 instead of $129,051,000 as proposed by the House and $139,305,000 as proposed by the Senate.

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Health Care Financing Administration

GRANTS TO STATES FOR MEDICAID

Amendment No. 45: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate providing a $26,600,000,000 advance fiscal year 1995 Medicaid appropriation.

PROGRAM MANAGEMENT

Amendment No. 46: Makes available from trust funds $2,189,960,000 instead of $2,172,598,000 as proposed by the House and $2,192,414,000 as proposed by the Senate.

Amendment No. 47: Earmarks $2,189,960,000 instead of $2,172,598,000 as proposed by the House and $2,192,414,000 as proposed by the Senate.

Social Security Administration

SPECIAL BENEFITS FOR DISABLED COAL MINERS

Amendment No. 48: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides an advance appropriation of $190,000,000 for the first quarter of fiscal year 1995 for black lung benefit payments as proposed by the Senate. The House bill did not provide an advance appropriation for this purpose.

SUPPLEMENTAL SECURITY INCOME PROGRAM

Amendment No. 49: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$20,183,775,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate. The bill includes $20,183,775,000 for supplemental security income instead of $20,181,775,000 as proposed by the House and $20,172,775,000 as proposed by the Senate.

The conference agreement provides $6,000,000 that was included in the Senate bill for SSI outreach demonstration projects. The House bill did not provide funding for this purpose. The conferees have also provided $41,000,000 to reimburse the trust funds for the SSI program share of the automation initiative funded in the limitation on administrative expenses account. The House bill included $45,000,000 for this purpose, and the Senate bill included $30,000,000.

Amendment No. 50: Provides that indefinite budget authority can be used to fund supplemental security income benefit payments after June 15 as proposed by the Senate, instead of after July 31 as proposed by the House.

Amendment No. 51: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede

and concur in the amendment of the Senate which provides an advance appropriation of $6,770,000,000 for the first quarter of fiscal year 1995 for supplemental security income benefit payments as proposed by the Senate. The House bill did not provide an advance appropriation for this purpose.

LIMITATION ON ADMINISTRATIVE EXPENSES

Amendment No. 52: Provides a limitation on administrative expenses of $4,876,085,000 as proposed by the Senate, instead of $4,874,285,000 as proposed by the House.

Amendment No. 53: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides authority to fund work related to the Coal Industry Retiree Health Benefit Act of 1992 from the Limitation on Administrative Expenses account as proposed by the Senate. The House bill contained no similar provision.

Amendment No. 54: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *: Provided, That reimbursement to the Trust Funds under this heading for administrative expenses to carry out sections 9704 and 9706 of the Internal Revenue Code of 1986 shall be made, with interest, not later than September 30, 1996: Provided further, That not more than $1,800,000 is available until September 30, 1995 for expenses necessary for the Commission on the Social Security "Notch" Issue, established by section 635 of Public Law 102–393 as amended*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes language proposed by the Senate requiring that the trust funds be reimbursed with interest for work related to the Coal Industry Retiree Health Benefit Act of 1992, and which earmarks $1,800,000 for the Commission on the Social Security "Notch" Issue to remain available until September 30, 1995. The conferees have deleted language proposed by the Senate which limited the amount of Medicare trust funds which could be used for administrative expenses. The House bill included no similar provision.

Amendment No. 55: Appropriates $300,000,000 for an automation initiative instead of $330,000,000 as proposed by the House and $220,000,000 as proposed by the Senate.

ADMINISTRATION FOR CHILDREN AND FAMILIES

FAMILY SUPPORT PAYMENTS TO STATES

Amendment No. 56: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides an advance appropriation of $4,200,000,000 for the first quarter of fiscal year 1995 for family support payments to States payments as proposed by the Senate. The House bill did not provide an advance appropriation for this purpose.

LOW INCOME HOME ENERGY ASSISTANCE

Amendment No. 57: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert:

LOW INCOME HOME ENERGY ASSISTANCE

For making payments under title XXVI of the Omnibus Budget Reconciliation Act of 1981, $1,475,000,000 to be available for obligation in the period October 1, 1994 through June 30, 1995.

For making payments under title XXVI of the Omnibus Budget Reconciliation Act of 1981, an additional $600,000,000: Provided, That all of the funds available under this paragraph are hereby designated by Congress to be emergency requirements pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985: Provided further, That these funds shall be made available only after submission to Congress of a formal budget request by the President that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes an advance appropriation of $1,475,000,000 for low income home energy assistance for the program year 1994–1995, and does not include borrowing authority to reimburse prior year costs. The Senate bill included an advance appropriation of $1,507,408,000, of which $100,000,000 could be used for FY 1994 costs. The House bill did not contain an advance appropriation for this program. The conferees recommend that $25,000,000 be used for the leveraging incentive fund in program year 1993–1994, and that $35,000,000 be used for this purpose in program year 1994–1995.

The conference agreement also includes language proposed by the Senate which provides an additional $600,000,000 which shall be available only upon submission to Congress of a formal budget request designating the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985. These funds are intended to be made available to meet emergencies which may be national, regional, or local in scope. The conferees therefore urge the Administration to make sufficient LIHEAP emergency funds available to meet the needs of flood victims in the Midwest States, without requiring a nationwide, formula distribution.

COMMUNITY SERVICES BLOCK GRANT

Amendment No. 58: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$464,224,000, of which $42,940,000 shall be for carrying out section 681(a) of the Community Services Block Grant Act, includ-*

ing $12,000,000 which shall be for carrying out the National Youth Sports Program: Provided, That payments from such amount to the grantee and subgrantee administering the National Youth Sports Program may not exceed the aggregate amount contributed in cash or in kind by the grantee and subgrantee: Provided further, That amounts in excess of $9,400,000 of such amount may not be made available to the grantee and subgrantees administering the National Youth Sports Program unless the grantee agrees to provide contributions in cash over and above the preceding year's cash contribution to such program in an amount that equals 29 percent of such excess amount

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $464,224,000 for Community Services Block Grant programs instead of $447,643,000 as proposed by the House and $472,649,000 as proposed by the Senate. The conference agreement includes language proposed by the Senate which earmarks $12,000,000 for the National Youth Sports Program and requires the grantee to provide a cash match of 29% of the amount in excess of $9,400,000. The House bill did not include a matching provision.

The conferees expect the Department of Health and Human Services to promulgate new regulations delineating increased matching requirements for the youth sports program, as well as to require a competitive process, for one or more awards. Promotional activities for this program shall include acknowledgement of the federal funding provided through the Department of Health and Human Services.

The conference agreement deletes language proposed by the Senate which reduced funding for consultant services for agencies funded in the bill by 3.52 percent from the level proposed in the President's Budget. The House bill contained no similar provision.

PAYMENTS TO STATES FOR CHILD CARE ASSISTANCE

Amendment No. 59: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which makes funding for the child care and development block grant program available for obligation under the same terms and conditions applicable in the prior fiscal year. The House bill contained no similar provision.

SOCIAL SERVICES BLOCK GRANT

Amendment No. 60: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $2,800,000,000 for the ongoing social services block grant under title XX of the Social Security Act and appropriates an additional $1,000,000,000, to remain available until expended, for the newly-authorized activities under title XX related to public investments in qualified empowerment zones and enterprise communities. The House bill included $2,800,000,000 for the ongoing title XX program.

CHILDREN AND FAMILIES SERVICES PROGRAMS

Amendment No. 61: Inserts a legal citation for the Commission on Child and Family Welfare as proposed by the Senate. The conferees are concerned about the increasing number of commissions that have an extended life. It is not the intention of the conferees to fund this Commission beyond fiscal year 1995.

Amendment No. 62: Appropriates $4,237,050,000 instead of $4,169,806,000 as proposed by the House and $4,296,796,000 as proposed by the Senate.

FAMILY SUPPORT AND PRESERVATION

Amendment No. 63: Appropriates $60,000,000 for family support and preservation as proposed by the Senate. The House bill did not include funding for this new program, which was authorized in the Omnibus Reconciliation Act of 1993 after passage of the House appropriations bill.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

Amendment No. 64: Appropriates $871,282,000 instead of $841,875,000 as proposed by the House and $881,863,000 as proposed by the Senate.

OFFICE OF THE SECRETARY

GENERAL DEPARTMENTAL MANAGEMENT

Amendment No. 65: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$94,431,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $500,000 to continue the HHS human services transportation initiative.

The conferees are aware that a significant amount of activity is occurring within the Department concerning programs related to domestic violence. The conferees request the Department to prepare and submit a report prior to next year's appropriations hearings outlining the amount of money being spent on this subject and explaining the operations of the various programs and the degree to which they are coordinated.

OFFICE OF INSPECTOR GENERAL

Amendment No. 66: Appropriates $63,590,000 instead of $62,379,000 as proposed by the House and $64,800,000 as proposed by the Senate.

GENERAL PROVISIONS

Amendment No. 67: Restores House language stricken by the Senate providing the funds for administrative costs for each Public

Health Service agency funded in this Act shall not exceed the amount requested in the President's budget.

Amendment No. 68: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *1911(d) and section 1503*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement restores a legal citation stricken by the Senate and inserts a citation added by the Senate pertaining to automatic taps in authorizing legislation.

The conferees direct the National Cancer Institute and the National Institute of Environmental Health Sciences to become more aggressive in the pursuit of research into the role environmental factors play in contributing to elevated rates of breast cancer such as have been observed in Nassau and Suffolk counties, in the State of New York, and in other counties throughout the United States. In prohibiting funding for section 1911(d) of P.L. 103–43, it is not the intention of the conferees to prohibit the conduct of the study described in section 1911(a) through 1911(c). The conferees strongly encourage such research into the role of environmental factors and note that the National Cancer Institute retains the discretion to use funds appropriated under this Act to carry out the study so described.

Amendment No. 69: Reported in technical disagreement. The managers on the part of the House will offer a motion to rocede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *SEC. 207. For the purpose of carrying out subparts II and III of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.) for fiscal year 1994, the Secretary of Health and Human Services shall obligate $7,532,065 from the amounts made available pursuant to section 1935(b) of that Act for fiscal year 1994 to those States and Indian tribes or tribal organizations to which the amounts specified in the award statement issued by the Substance Abuse and Mental Health Services Administration under those subparts on November 2, 1992, was greater than the amount specified in the award statement issued on August 6, 1993, in the amounts equal to those differentials.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Inserts language proposed by the Senate that requires the Secretary to obligate $7,532,065 from funds available for the Substance Abuse Block Grant program to compensate certain States for reductions in their fourth quarter allocations for the block grant in fiscal year 1993. The original allocations were based on faulty data. The language has been modified to delete references to individual States. The conferees stress that this one-time action is only being taken to correct an error by the Department in the original allocation of funds to the States. This action will have no impact on State allocations under the block grant in fiscal year 1994.

Amendment No. 70: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate pertaining to funding limits for peer review organizations in the Medicare program.

Amendment No. 71: Deletes language proposed by the Senate pertaining to disproportionate share hospital payments in the Medicaid program.

Amendment No. 72: Deletes without prejudice Senate language which would have prohibited payment of Social Security disability benefits to individuals who are confined to mental institutions because of a "not guilty by reason of insanity" court judgment. The conferees believe this issue should be addressed by the authorizing committees.

TITLE III—DEPARTMENT OF EDUCATION

EDUCATION REFORM

Amendment No. 73: Inserts technical provision added by the Senate indicating that this appropriation account includes authority to transfer funds.

Amendment No. 74: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *For carrying out education reform activities authorized in law including activities authorized by the Carl D. Perkins Vocational and Applied Technology Education Act, $155,000,000, of which $5,000,000, under section 402 of the Perkins Act, shall be used by the Secretary for activities, including peer review of applications, related to school-to-work transition, and $45,000,000 shall be used under section 420A of the Perkins Act for State grants and subgrants to initiate activities in States and localities related to school-to-work transition: Provided, That $105,000,000 of the funds provided shall be for carrying out activities authorized by the Goals 2000: Educate America Act, or similar legislation, if enacted into law by April 1, 1994, of which $5,000,000 shall be used for "State Planning for Improving Student Achievement Through Integration of Technology Into the Curriculum"; and that if such legislation is not enacted by that date, the $105,000,000 shall be transferred to "Student Financial Assistance" to be used to alleviate the funding shortfall in the Pell Grant program under subpart 1 of part A of title IV of the Higher Education Act of 1965, as amended: Provided further, That funds appropriated in this account shall become available on July 1, 1994 and remain available through September 30, 1995.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $50,000,000 for school-to-work initiatives as proposed by the Senate instead of $33,750,000 as proposed by the House.

The conference agreement also provides a contingent appropriation of $105,000,000 to implement the Goals 2000: Educate America legislation currently being considered by the House and

the Senate. This amount includes $5,000,000 for new initiatives to integrate technology into school curricula, if authorized. The agreement provides that if the Goals 2000 legislation is not enacted by April 1, 1994 that the funds provided will be applied to the shortfall in the Pell Grant program as proposed by the Senate. This appropriation is provided on a forward funded basis similar to other education accounts.

COMPENSATORY EDUCATION FOR THE DISADVANTAGED

Amendment No. 75: Appropriates $6,924,497,000 for compensatory education for the disadvantaged programs instead of $6,871,147,000 as proposed by the House and $6,971,620,000 as proposed by the Senate.

Amendment No. 76: Provides that $6,896,052,000 become available on a forward funded basis instead of $6,844,682,000 as proposed by the House and $6,943,175,000 as proposed by the Senate.

Amendment No. 77: Earmarks $5,642,000,000 for basic grants instead of $5,597,000,000 as proposed by the House and $5,687,000,000 as proposed by the Senate.

Amendment No. 78: Deletes language included by the House but stricken by the Senate. The conference agreement follows the basic statute which provides for a setaside of basis grant funds for grants to the Pacific Outlying Areas.

Amendment No. 79: Earmarks $41,434,000 for capital expenses instead of $39,734,000 as proposed by the House and $42,000,000 as proposed by the Senate.

Amendment No. 80: Earmarks $91,373,000 for the Even Start program instead of $89,123,000 as proposed by the House and $92,123,000 as proposed by the Senate.

Amendment No. 81: Earmarks $305,193,000 for migrant education programs instead of $302,773,000 as proposed by the House and $306,000,000 as proposed by the Senate.

Amendment No. 82: Earmarks $4,960,000 for rural technical assistance as proposed by the Senate instead of $2,980,000 as proposed by the House.

IMPACT AID

Amendment No. 83: Appropriates $798,208,000 for Impact Aid activities instead of $813,074,000 as proposed by the House and $748,368,000 as proposed by the Senate.

Amendment No. 84: Earmarks $613,445,000 for 3(a) payments instead of $630,000,000 as proposed by the House and $563,780,000 as proposed by the Senate.

Amendment No. 85: Earmarks $123,129,000 for 3(b) payments instead of $123,629,000 as proposed by the House and $121,629,000 as proposed by the Senate.

Amendment No. 86: Earmarks $33,437,000 for 3(d)(2)(B) payments instead of $29,462,000 as proposed by the House and $34,762,000 as proposed by the Senate.

Amendment No. 87: Deletes earmark for 3(e) payments included by the House but stricken by the Senate. The conference agreement includes no funding for this activity.

SCHOOL IMPROVEMENT PROGRAMS

Amendment No. 88: Appropriates $1,376,659,000 for school improvement activities instead of $1,339,178,000 as proposed by the House and $1,393,893,000 as proposed by the Senate.

Amendment No. 89: Provides that $1,050,603,000 of these funds be available on a forward funded basis instead of $1,014,709,000 as proposed by the House and $1,065,101,000 as proposed by the Senate.

Amendment No. 90: Earmarks $25,196,000 for chapter 2 national programs as proposed by the Senate instead of $24,925,000 as proposed by the House.

Amendment No. 91: Earmarks $250,998,000 for State grants for mathematics and science education instead of $246,016,000 as proposed by the House and $252,658,000 as proposed by the Senate.

Amendment No. 92: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *:Provided further, That of the amount provided, $20,000,000 shall be used for Department of Education activities authorized under the Safe Schools Act, or similar legislation, if such legislation is enacted by April 1, 1994, except that if such legislation is not enacted by that date, this amount shall be transferred to "Student Financial Assistance" to be used to alleviate the funding shortfall in the Pell Grant program under subpart 1 of part A of title IV of the Higher Education Act of 1965, as amended.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $20,000,000 for a new safe schools initiative if enacted into law by April 1, 1994 instead of $32,838,000 as proposed by the Senate. The House bill did not include funds for this purpose. The conferees are agreed that this amount should be available on a forward funded basis similar to other elementary and secondary education programs. The conference agreement provides that if the necessary authorizing legislation is not enacted by April 1, 1994, that these funds will be transferred to "Student Financial Assistance" for the Pell Grant shortfall.

The conferees intend that all of the funds provided for the Ellender fellowships program be used for student fellowships and that the Close Up Foundation provide a Federal dollar match no less than the amount matched in FY 1993. The conferees further intended that the Close Up Foundation match Federal dollars on at least a one to two basis in 1995.

The conferees intend that the funding provided for Education for Native Hawaiians be distributed as follows:

Special Education Program	$1,000,000
Family Based Education Centers	5,000,000
Gifted and Talented Program	1,000,000
Model Curriculum Implementation Project	50,000
Higher Education Program	800,000

Further, given that a priority recommendation of the Native Hawaiian Education Summit was the establishment of cultural learning centers, a minimum of $374,000 shall be for the planning and development of at least two cultural learning centers.

BILINGUAL AND IMMIGRANT EDUCATION

Amendment No. 93: Appropriates $240,155,000 for bilingual and immigrant education instead of $242,789,000 as proposed by the House and $232,251,000 as proposed by the Senate.

Amendment No. 94: Earmarks $36,431,000 for training programs instead of $36,672,000 as proposed by the House and $35,708,000 as proposed by the Senate.

Amendment No. 95: Earmarks $38,992,000 for immigrant education programs instead of $40,000,000 as proposed by the House and $35,968,000 as proposed by the Senate.

SPECIAL EDUCATION

Amendment No. 96: Appropriates $3,108,702,000 for special education instead of $3,039,442,000 as proposed by the House and $3,134,734,000 as proposed by the Senate.

Amendment No. 97: Earmarks $2,149,686,000 for Part B grants to States instead of $2,108,218,000 as proposed by the House and $2,163,508,000 as proposed by the Senate.

Amendment No. 98: Earmarks $339,257,000 for preschool grants instead of $325,773,000 as proposed by the House and $343,751,000 as proposed by the Senate.

Amendment No. 99: Earmarks $253,152,000 for Part H grants for infants and families instead of $243,769,000 as proposed by the House and $256,280,000 as proposed by the Senate.

Amendment No. 100: Earmarks $116,878,000 for the Chapter 1 handicapped program instead of $113,755,000 as proposed by the House and $120,000,000 as proposed by the Senate.

REHABILITATION SERVICES AND DISABILITY RESEARCH

Amendment No. 101: Includes the citation for the Technology-Related Assistance for Individuals with Disabilities Act as proposed by the Senate. The House bill included a similar citation.

Amendment No. 102: Appropriates $2,296,936,000 for rehabilitation services and disability research instead of $2,251,028,000 as proposed by the House and $2,316,913,000 as proposed by the Senate.

SPECIAL INSTITUTIONS FOR PERSONS WITH DISABILITIES

GALLAUDET UNIVERSITY

Amendment No. 103: Appropriates $78,435,000 for Gallaudet University instead of $77,435,000 as proposed by the House and $79,435,000 as proposed by the Senate.

Amendment No. 104: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$1,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $1,000,000 to remain available until expended for construction instead of $2,000,000 as proposed by the Senate. The House bill did not include funds for this purpose.

VOCATIONAL AND ADULT EDUCATION

Amendment No. 105: Appropriates $1,481,183,000 for vocational and adult education instead of $1,474,243,000 as proposed by the House and $1,483,433,000 as proposed by the Senate.

Amendment No. 106: Earmarks $38,077,000 for vocational education research and demonstration activities instead of $31,327,000 as proposed by the House and $40,327,000 as proposed by the Senate.

Amendment No. 107: Earmarks $23,455,000 for vocational education demonstrations instead of $16,705,000 as proposed by the House and $25,705,000 as proposed by the Senate.

Amendment No. 108: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert: *, including $3,000,000 for model community education and employment centers*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement modifies language inserted by the Senate to require that $3,000,000 of funds for vocational education be earmarked to demonstrate the model community education and employment centers concept. The Senate bill earmarked $5,000,000 for this purpose. The House bill included no similar provision.

STUDENT FINANCIAL ASSISTANCE

Amendment No. 109: Deletes citation proposed by the Senate.

Amendment No. 110: Appropriates $8,020,160,000 for student financial assistance instead of $8,120,366,000 as proposed by the House and $8,004,293,000 as proposed by the Senate.

Amendment No. 111: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$2,300: Provided further, That notwithstanding section 401(g) of the Act, as amended, if the Secretary determines, prior to publication of the payment schedule for award year 1994–1995, that the $6,303,566,000 included within this appropriation for Pell Grant awards for award year 1994–1995 is insufficient to satisfy fully all such awards for which students are eligible, as calculated under section 401(b) of the Act, the amount paid for each such award shall be reduced by either a fixed or variable percentage, or by a fixed dollar amount, as determined in accordance with a schedule of reductions established by the Secretary for this purpose*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement sets the maximum Pell Grant Award for the 1994–1995 academic year at $2,300 as proposed by the Senate instead of $2,250 as proposed by the House. The conference agreement also includes language requested by the Department of Education requiring the Secretary to reduce awards if the appropriation is inadequate to fully fund Pell awards with the $2,300 maximum. Both the Department and the conferees believe that the amount agreed to in conference for the Pell program is adequate to finance the agreed upon maximum. The additional language authorizing adjustment is not expected to be used but has been included to meet scorekeeping requirements under the Budget Enforcement Act.

The conferees have agreed to provide $583,407,000 for Federal Supplemental Educational Opportunity Grants, $616,508,000 for the Federal Work-Study program, and $72,429,000 for State Student Incentive Grants. These are the same levels provided in the Senate bill and the same levels appropriated in fiscal year 1993. The conference agreement also includes $21,250,000 for the second year of the new State Postsecondary Review Program, instead of $25,000,000 as proposed by the House and $10,000,000 as proposed by the Senate.

GUARANTEED STUDENT LOANS PROGRAM ACCOUNT

NATIONAL COMMISSIONS

Amendment No. 112: Deletes language included by the House but stricken by the Senate. The conference agreement deletes the rescission of Fiscal Year 1993 funds proposed by the House. This rescission would have eliminated all funds for two new commissions authorized by the Higher Education Amendments of 1992. The conference action leaves in place $992,000 each for the National Commission on the Cost of Higher Education and the National Commission on Independent Higher Education.

FEDERAL DIRECT STUDENT LOAN PROGRAM ACCOUNT

Amendment No. 113: Inserts the word "Student" into the appropriate heading as proposed by the Senate.

Amendment No. 114: Modifies the legislative citation for the Federal Direct Student Loan Program Account as proposed by the Senate.

HIGHER EDUCATION

Amendment No. 115: Modifies legislative citation as proposed by the Senate.

Amendment No. 116: Restores legislative citation included by the House but stricken by the Senate. This citation relates to studies of the training needs in the civilian airline industry. The conferees are agreed that $700,000 is included for this study under the Fund for the Improvement of Postsecondary Education.

Amendment No. 117: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede

and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum proposed by said amendment, insert: *$893,688,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $893,688,000 for higher education instead of 889,855,000 as proposed by the House and $882,974,000 as proposed by the Senate.

Amendment No. 118: Deletes without prejudice legislative language proposed by the Senate. This language would have made a technical amendment to the Higher Education Act related to the Robert Byrd Scholarships program. The conferees understand that this issue is currently being addressed by the authorizing committee. The conference agreement includes sufficient funds to support the cost of this technical change.

HISTORICALLY BLACK COLLEGE AND UNIVERSITY

CAPITAL FINANCING, PROGRAM ACCOUNT

Amendment No. 119: Provided for a limitation of $357,000,000 on the volume of loan guarantees issued in Fiscal Year 1994 as proposed by the Senate. The House bill provided for $178,500,000 of guarantees.

EDUCATION RESEARCH, STATISTICS AND IMPROVEMENT

Amendment No. 120: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which clarifies that funding for this account is available for activities under legislative citations other than section 405 and 406 of the General Education Provisions Act. These citations are expected to be modified by new legislation during Fiscal year 1994.

Amendment No. 121: Restores the citation for Blue Ribbon Schools stricken by the Senate.

Amendment No. 122: Deletes the citation for educational partnership grants as proposed by the Senate.

Amendment No. 123: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$292,592,000: Provided, That $31,000,000 shall be for research centers, including funds to extend the existing award for a research center on the education of disadvantaged students for up to one year; $38,032,000 shall be for regional laboratories, including $9,508,000 for rural initiatives; $32,500,000 shall be for activities under the Fund for Innovation in Education; $4,463,000 shall be for civic education activities under section 4609; $5,396,000 shall be for Grants for Schools and Teachers under subpart 1 and $3,687,000 shall be for Family School Partnerships under subpart 2 of part B of title III of Public Law 100–297; $16,072,000 shall be for national programs under section 2012, including not less than $5,472,000 for the National Clearinghouse for Science and Mathematics under sec-*

tion 2012(d); and $13,871,000 shall be for regional consortia under subpart 2 of part A of title II; $25,944,000 shall be for star schools, of which $4,000,000 shall be awarded competitively for a demonstration of a statewide, two-way interactive fiber optic telecommunications network, carrying voice, video, and data transmissions, and housing a point of presence in every county; and $3,212,000 shall be for the National Writing Project

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

LIBRARIES

Amendment No. 124: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert: *$146,309,000 of which $17,972,000 shall be used to carry out the provisions of title II of the Library Services and Construction Act and shall remain available until expended, and $4,960,000 shall be for section 222 and $2,802,000 shall be for section 223 of the Higher Education Act, of which $2,500,000 shall be for demonstration of on-line and dial-in access to a statewide, multitype library bibliographic data base through a statewide fiber optic network housing a point of presence in every county, connecting library services in every municipality, to be awarded competitively*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $2,500,000 for a demonstration of high technology library bibliographic databases. The conference agreement provides that these funds are to be awarded competitively.

DEPARTMENTAL MANAGEMENT

PROGRAM ADMINISTRATION

Amendment No. 125: Appropriates $352,008,000 for departmental management as proposed by the House instead of $291,921,000 as proposed by the Senate.

The conferees are concerned the Department continues to ignore the provisions in the Higher Education Act regarding the appointment of a liaison for community and junior colleges. To date, no action has been taken regarding this appointment. The conferees urge the Secretary to comply with the law, including all of the qualifications for the appointee outlined in the Act, and fill the position on an expedited basis.

The conferees concur in concerns expressed in the House report about the Department's peer review of grant applications, and have provided additional resources and flexibility to promote needed improvement of the process. The conferees strongly encourage the Department to return to the practice of requiring three readers for competitive grant proposals, at least two of whom should come from outside the Department and have some expertise in the field in which the grant is to be made. The conferees are particularly concerned about the quality of the review process used to select

awardees under the Student Support Services program under TRIO.

GENERAL PROVISIONS

Amendment No. 126: Deletes without prejudice Senate language which expressed the sense of the Congress concerning specific funding levels for education in future years.

Amendment No. 127: Deletes without prejudice Senate language which expressed the sense of the Congress that a specific procedure for considering proposals to consolidate or eliminate education programs be established as recommended in the National Performance Review. This matter is currently being reviewed by the Department and proposals are expected in the near future.

TITLE IV—RELATED AGENCIES

ACTION

OPERATING EXPENSES

Amendment No. 128: Appropriates $205,097,000 instead of $201,526,000 as proposed by the House and $206,287,000 as proposed by the Senate.

The conference agreement deletes the House language that earmarked funds for the VISTA program and the Senate language which reduced funding for consultant services for agencies funded in the bill by 5.025 percent.

CORPORATION FOR PUBLIC BROADCASTING

Amendment No. 129: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$312,000,000, of which $7,000,000 shall be for Ready to Learn activities consistent with the purposes outlined in P.L. 102–545*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees agree that $7,000,000 be set aside for Ready to Learn activities prior to allocating funds under the Public Telecommunications Act of 1992, P.L. 102–356.

The Corporation for Public Broadcasting shall consult with the Department of Education to assure that the Department's school readiness and curriculum goals are integrated into the programming and accompanying materials promulgated in accordance with P.L. 102–245, the Ready to Learn Act.

It is the understanding of the conferees that the Corporation shall award contracts, cooperative agreements, or grants to eligible entities defined in Public Law 102–545, sections 4702(b)(1) and 4702(b)(2).

NATIONAL COUNCIL ON DISABILITY

Amendment No. 130: Appropriates $1,690,000 for National Council on Disability instead of $1,590,000 as proposed by the House and $1,791,000 as proposed by the Senate.

NATIONAL MEDIATION BOARD

Amendment No. 131: Appropriates $8,657,000 for National Mediation Board instead of $8,506,000 as proposed by the House and $8,807,000 as proposed by the Senate.

TITLE V—GENERAL PROVISIONS

Amendment No. 132: Restores section 507 as proposed by the House and stricken by the Senate providing that funds expended under this Act shall be expended in accordance with the Buy American Act. Deletes other language proposed by the House and stricken by the Senate concerning the purchase of American-made products.

(Rescission)

Amendment No. 133: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the section number named in said amendment, insert: *508*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement inserts language proposed by the Senate that provides for a cost-of-living adjustment for black lung benefit payments in January, 1994; the agreement also includes a rescission of $225,000,000, as proposed by the Senate, from funds appropriated for the Community Investment Program in Public Law 102-368. The House bill included no similar provisions.

Amendment No. 134: Deletes language proposed by the Senate expressing the sense of the Senate that the Department of Justice should investigate whether any Federal civil rights laws were violated as a result of the murder of Yankel Rosenbaum on August 19, 1991 and the ensuing riots in Crown Heights.

TITLE VI—NONSMOKING POLICY

Amendment No. 135: Deletes title VI of the bill proposed by the Senate that would have required the Administrator of the Environmental Protection Agency to issue within 180 days of enactment guidelines for instituting and enforcing a nonsmoking policy at each indoor facility where children's services are provided and required any person who provides children's services to establish and enforce a nonsmoking policy that meets or exceeds certain requirements.

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
SUMMARY						
Title I - Department of Labor:						
Federal Funds	12,270,516,000	12,872,261,000	10,972,157,000	10,859,651,000	10,914,538,000	-1,355,978,000
Trust Funds	(3,462,511,000)	(3,690,914,000)	(3,692,212,000)	(3,662,424,000)	(3,701,352,000)	(+238,841,000)
Title II - Department of Health and Human Services:						
Federal Funds	210,931,782,000	215,624,206,000	175,032,320,000	215,968,067,000	215,802,937,000	+4,871,155,000
Current year	(172,736,374,000)	(176,459,426,000)	(175,032,320,000)	(176,700,659,000)	(176,567,937,000)	(+3,831,563,000)
1995 advance	(38,195,408,000)	(39,164,780,000)	---	(39,267,408,000)	(39,235,000,000)	(+1,039,592,000)
Trust Funds	(7,049,992,000)	(8,374,324,000)	(7,774,421,000)	(7,686,037,000)	(7,763,583,000)	(+713,591,000)
Title III - Department of Education:						
Federal Funds	28,087,420,000	30,921,629,000	28,827,320,000	28,755,410,000	28,765,192,000	+677,772,000
Title IV - Related Agencies:						
Federal Funds	1,064,129,000	1,053,017,000	1,047,414,000	1,080,037,000	1,070,596,000	+6,467,000
Current year	(771,489,000)	(760,377,000)	(754,774,000)	(760,037,000)	(758,596,000)	(-12,893,000)
1996 advance	(292,640,000)	(292,640,000)	(292,640,000)	(320,000,000)	(312,000,000)	(+19,360,000)
Trust Funds	(111,062,000)	(109,589,000)	(109,514,000)	(109,514,000)	(109,514,000)	(-1,548,000)
Weed and Seed (P.L. 102-360) (rescission)	225,000,000	---	---	-225,000,000	-225,000,000	-450,000,000
Bill-wide consultant savings	---	---	---	-10,000,000	---	---
Total, all titles:						
Federal Funds	252,578,847,000	260,471,113,000	215,679,211,000	256,428,165,000	256,328,263,000	+3,749,416,000
Current year	(214,090,799,000)	(221,013,693,000)	(215,386,571,000)	(216,840,757,000)	(216,781,263,000)	(+2,690,464,000)
1995 advance	(38,195,408,000)	(39,164,780,000)	---	(39,267,408,000)	(39,235,000,000)	(+1,039,592,000)
1996 advance	(292,640,000)	(292,640,000)	(292,640,000)	(320,000,000)	(312,000,000)	(+19,360,000)
Trust Funds	(10,623,565,000)	(12,174,827,000)	(11,576,147,000)	(11,457,978,000)	(11,574,449,000)	(+950,884,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
TITLE I - DEPARTMENT OF LABOR						
EMPLOYMENT AND TRAINING ADMINISTRATION						
PROGRAM ADMINISTRATION						
Job training programs..................................	22,890,000	25,451,000	23,229,000	23,229,000	23,229,000	+339,000
Trust funds..	(2,192,000)	(2,244,000)	(2,244,000)	(2,244,000)	(2,244,000)	(+52,000)
Employment security....................................	457,000	1,970,000	1,582,000	1,582,000	1,582,000	+1,125,000
Trust funds..	(13,624,000)	(15,117,000)	(15,117,000)	(15,117,000)	(15,117,000)	(+1,493,000)
Financial and administrative management...............	14,635,000	19,769,000	19,115,000	19,115,000	19,115,000	+4,400,000
Trust funds..	(10,095,000)	(8,232,000)	(8,232,000)	(8,232,000)	(8,232,000)	(-1,863,000)
Executive direction and administration................	4,817,000	6,361,000	6,100,000	6,100,000	6,100,000	+1,283,000
Trust funds..	(4,240,000)	(1,424,000)	(1,424,000)	(1,424,000)	(1,424,000)	(-2,816,000)
Regional operations....................................	15,934,000	27,539,000	25,184,000	25,184,000	25,184,000	+9,250,000
Trust funds..	(25,205,000)	(19,638,000)	(19,638,000)	(19,638,000)	(19,638,000)	(-5,567,000)
Apprenticeship services................................	16,874,000	17,196,000	17,196,000	17,196,000	17,196,000	+322,000
Total, Program Administration......................	130,963,000	144,941,000	139,061,000	139,061,000	139,061,000	+8,098,000
Federal funds......................................	75,607,000	98,286,000	92,406,000	92,406,000	92,406,000	+16,799,000
Trust funds..	(55,356,000)	(46,655,000)	(46,655,000)	(46,655,000)	(46,655,000)	(-8,701,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
TRAINING AND EMPLOYMENT SERVICES						
Grants to States:						
Adult training	1,015,021,000	1,030,021,000	988,021,000	988,021,000	988,021,000	-27,000,000
Youth training	676,682,000	686,682,000	658,682,000	658,682,000	658,682,000	-18,000,000
Summer youth employment and training program	840,674,000	1,688,782,000	988,782,000	853,782,000	888,282,000	+47,608,000
Dislocated worker assistance	566,646,000	1,921,006,000	1,118,000,000	1,118,000,000	1,118,000,000	+551,354,000
Flood relief supplemental	54,600,000	---	---	---	---	-54,600,000
Federally administered programs:						
Native Americans	61,871,000	61,871,000	61,871,000	65,000,000	64,218,000	+2,347,000
Migrants and seasonal farmworkers	78,303,000	78,303,000	78,303,000	88,000,000	85,576,000	+7,273,000
School-to-work	---	135,000,000	33,750,000	50,000,000	50,000,000	+50,000,000
Job Corps:						
Operations	891,532,000	913,913,000	913,913,000	913,913,000	913,913,000	+22,381,000
Construction and renovation	74,543,000	239,756,000	126,556,000	126,556,000	126,556,000	+52,013,000
Subtotal, Job Corps	966,075,000	1,153,669,000	1,040,469,000	1,040,469,000	1,040,469,000	+74,394,000
Youth Fair Chance	50,000,000	25,000,000	25,000,000	---	25,000,000	-25,000,000
Veterans' employment	8,957,000	8,957,000	8,957,000	8,957,000	8,957,000	---

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
National activities:						
Pilots and demonstrations	35,000,000	35,000,000	35,000,000	37,000,000	36,500,000	+1,500,000
Research, demonstration and evaluation	8,301,000	8,301,000	12,301,000	12,301,000	12,301,000	+4,000,000
Other	20,521,000	20,521,000	20,521,000	23,550,000	23,021,000	+2,500,000
Subtotal, National activities	63,902,000	63,902,000	67,902,000	72,931,000	71,902,000	+8,000,000
Subtotal, Federal activities	1,229,108,000	1,526,702,000	1,316,252,000	1,325,357,000	1,346,122,000	+117,014,000
Total, Job Training Partnership Act	4,382,731,000	6,053,193,000	5,069,737,000	4,943,842,000	4,999,107,000	+616,376,000
Job training for the homeless:						
Regular program	7,483,000	7,482,000	7,482,000	7,482,000	7,482,000	---
Veterans program	5,055,000	5,055,000	5,055,000	5,055,000	5,055,000	---
Glass Ceiling Commission	744,000	744,000	744,000	744,000	744,000	---
National Center for the Workplace	744,000	744,000	744,000	1,000,000	1,122,000	+378,000
Total, Training and Employment Services	4,396,756,000	6,067,210,000	5,083,762,000	4,958,623,000	5,013,810,000	+616,754,000
COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS						
National contracts	308,926,000	328,472,000	320,190,000	320,190,000	320,190,000	+11,264,000
State grants	87,134,000	92,646,000	90,310,000	90,310,000	90,310,000	+3,176,000
Total	396,060,000	421,118,000	410,500,000	410,500,000	410,500,000	+14,440,000
FEDERAL UNEMPLOYMENT AND ALLOWANCES						
Trade adjustment	211,000,000	189,900,000	189,900,000	189,900,000	189,900,000	-21,100,000
Other activities	250,000	100,000	100,000	100,000	100,000	-150,000
Total	211,250,000	190,000,000	190,000,000	190,000,000	190,000,000	-21,250,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS						
Unemployment Compensation (Trust Funds):						
State Operations....................................	(1,629,783,000)	(1,715,906,000)	(1,715,906,000)	(1,715,906,000)	(1,715,906,000)	(+86,123,000)
State integrity activities..........................	(327,356,000)	(356,928,000)	(356,928,000)	(356,928,000)	(356,928,000)	(+29,572,000)
National Activities.................................	(8,741,000)	(16,295,000)	(16,295,000)	(34,575,000)	(25,435,000)	(+16,694,000)
Contingency...	(299,912,000)	(347,272,000)	(347,272,000)	(347,272,000)	(347,272,000)	(+47,360,000)
Contingency bill language (OMB estimate)...........	(114,300,000)	(70,500,000)	(70,500,000)	(70,500,000)	(70,500,000)	(-43,800,000)
Portion treated as budget authority............	---	(39,770,000)	(39,770,000)	---	(39,770,000)	(+39,770,000)
Subtotal, Unemployment Compensation(trust funds)	(2,265,792,000)	(2,476,171,000)	(2,476,171,000)	(2,454,681,000)	(2,485,311,000)	(+219,519,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
Employment Service:						
Allotments to States:						
Federal funds....................................	21,555,000	24,986,000	24,986,000	24,986,000	24,986,000	+3,431,000
Trust funds....................................	(789,405,000)	(807,870,000)	(807,870,000)	(807,870,000)	(807,870,000)	(+18,465,000)
Subtotal....................................	810,960,000	832,856,000	832,856,000	832,856,000	832,856,000	+21,896,000
National Activities:						
Federal funds....................................	2,002,000	2,056,000	2,056,000	2,056,000	2,056,000	+54,000
Trust funds....................................	(66,754,000)	(68,556,000)	(68,556,000)	(60,556,000)	(68,556,000)	(+1,002,000)
Targeted jobs tax credit.....................	(14,880,000)	(15,282,000)	(14,880,000)	(15,282,000)	(14,880,000)	---
One-stop Career Centers........................	---	150,000,000	42,500,000	50,000,000	50,000,000	+50,000,000
Subtotal, Employment Service.....................	894,596,000	1,068,750,000	960,848,000	960,750,000	968,348,000	+73,752,000
Federal funds....................................	23,557,000	177,042,000	69,542,000	77,042,000	77,042,000	+53,485,000
Trust funds....................................	(871,039,000)	(891,708,000)	(891,306,000)	(883,708,000)	(891,306,000)	(+20,267,000)
Total, State Unemployment........................	3,160,388,000	3,544,921,000	3,437,019,000	3,415,431,000	3,453,659,000	+293,271,000
Federal Funds....................................	23,557,000	177,042,000	69,542,000	77,042,000	77,042,000	+53,485,000
Trust Funds....................................	(3,136,831,000)	(3,367,879,000)	(3,367,477,000)	(3,338,389,000)	(3,376,617,000)	(+239,786,000)
ADVANCES TO UNEMPLOYMENT TRUST FUND AND OTHER FUNDS...	4,665,000,000	2,556,000,000	2,556,000,000	2,556,900,000	2,556,000,000	-2,109,000,000
Total, Employment & Training Administration.....	12,960,417,000	13,724,198,000	11,816,342,000	11,669,615,000	11,762,730,000	-1,197,687,000
Federal funds....................................	9,768,230,000	10,309,664,000	8,402,210,000	8,284,571,000	6,339,458,000	-1,428,772,000
Trust funds....................................	(3,192,187,000)	(3,414,534,000)	(3,414,132,000)	(3,385,044,000)	(3,423,272,000)	(+231,085,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
LABOR - MANAGEMENT STANDARDS						
SALARIES AND EXPENSES						
Labor-management relations service....................	1,339,000	1,370,000	1,370,000	1,370,000	1,370,000	+31,000
Labor-management standards enforcement................	26,010,000	25,939,000	25,939,000	25,939,000	25,939,000	-71,000
Total, LMS.......................................	27,349,000	27,309,000	27,309,000	27,309,000	27,309,000	-40,000
PENSION AND WELFARE BENEFITS ADMINISTRATION						
SALARIES AND EXPENSES						
Enforcement and compliance............................	48,888,000	48,977,000	49,630,000	49,280,000	49,280,000	+392,000
Policy, regulation and public service.................	11,357,000	11,303,000	11,303,000	11,303,000	11,303,000	-54,000
Executive direction...................................	3,592,000	3,475,000	3,475,000	3,475,000	3,475,000	-117,000
Total, PWBA......................................	63,837,000	63,755,000	64,400,000	64,058,000	64,058,000	+221,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
PENSION BENEFIT GUARANTY CORPORATION						
Program Administration subject to limitation (Trust Funds)........	(33,533,000)	(34,194,000)	(34,194,000)	(34,194,000)	(34,194,000)	(+661,000)
Services related to terminations not subject to limitations (non-add) 1/........	(99,039,000)	(101,487,000)	(101,487,000)	(101,487,000)	(101,487,000)	(+2,448,000)
Total, PBGC........	(132,572,000)	(135,681,000)	(135,681,000)	(135,681,000)	(135,681,000)	(+3,109,000)
EMPLOYMENT STANDARDS ADMINISTRATION						
SALARIES AND EXPENSES						
Enforcement of wage and hour standards........	94,957,000	95,157,000	97,379,000	97,379,000	97,379,000	+2,423,000
Federal contractor EEO standards enforcement........	85,695,000	85,398,000	86,443,000	86,443,000	86,443,000	+748,000
Federal programs for workers' compensation........	70,336,000	71,923,000	71,923,000	71,923,000	71,923,000	+1,507,000
Trust funds........	(991,000)	(989,000)	(989,000)	(989,000)	(989,000)	(-2,000)
Executive direction and support services........	11,468,000	11,431,000	11,431,000	11,431,000	11,431,000	-38,000
Total, salaries and expenses........	233,445,000	234,898,000	238,165,000	238,165,000	238,165,000	+4,720,000
Federal funds........	232,454,000	233,909,000	237,176,000	237,176,000	237,176,000	+4,722,000
Trust funds........	(991,000)	(989,000)	(989,000)	(989,000)	(989,000)	(-2,000)
SPECIAL BENEFITS						
Federal employees compensation benefits........	286,000,000	275,000,000	275,000,000	275,000,000	275,000,000	-11,000,000
Longshore and harbor workers' benefits........	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	---
Total, Special Benefits........	290,000,000	279,000,000	279,000,000	279,000,000	279,000,000	-11,000,000

1/ Increase in non-limitation funds per 11/6/92 reapportionment.

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
BLACK LUNG DISABILITY TRUST FUND						
Benefit payments and interest on advances............	888,251,000	947,967,000	947,967,000	947,967,000	947,967,000	+59,716,000
Employment Standards Admin., salaries & expenses......	29,726,000	28,929,000	28,929,000	29,529,000	29,529,000	-197,000
Departmental Management, salaries and expenses........	25,698,000	24,384,000	24,384,000	24,384,000	24,384,000	-1,314,000
Departmental Management, inspector general............	352,000	295,000	295,000	295,000	295,000	-57,000
Subtotal, Black Lung Disablty. Trust Fund, appro	944,027,000	1,001,575,000	1,001,575,000	1,002,175,000	1,002,175,000	+58,148,000
Treasury administrative costs (indefinite)............	756,000	756,000	756,000	756,000	756,000	---
Total, Black Lung Disability Trust Fund.........	944,783,000	1,002,331,000	1,002,331,000	1,002,931,000	1,002,931,000	+58,148,000
Total, Employment Standards Administration......	1,468,228,000	1,516,229,000	1,519,496,000	1,520,096,000	1,520,096,000	+51,868,000
Federal funds..................................	1,467,237,000	1,515,240,000	1,518,507,000	1,519,107,000	1,519,107,000	+51,870,000
Trust funds....................................	(991,000)	(989,000)	(989,000)	(989,000)	(989,000)	(-2,000)
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION						
SALARIES AND EXPENSES						
Safety and health standards...........................	8,008,000	8,647,000	8,647,000	8,647,000	8,647,000	+639,000
Enforcement:						
Federal Enforcement...............................	134,689,000	137,518,000	137,518,000	138,122,000	138,122,000	+3,433,000
State programs....................................	67,285,000	68,630,000	68,630,000	68,630,000	68,630,000	+1,345,000
Technical Support.....................................	17,377,000	17,946,000	17,946,000	17,946,000	17,946,000	+569,000
Compliance Assistance.................................	40,957,000	41,899,000	42,009,000	44,009,000	44,009,000	+3,052,000
Safety and health statistics..........................	12,820,000	12,795,000	12,795,000	12,795,000	12,795,000	-25,000
Executive direction and administration................	7,114,000	7,095,000	7,095,000	7,095,000	7,095,000	-19,000
Total, OSHA.......................................	288,250,000	294,490,000	294,640,000	297,244,000	297,244,000	+8,994,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
MINE SAFETY AND HEALTH ADMINISTRATION						
SALARIES AND EXPENSES						
Enforcement:						
Coal	100,331,000	101,416,000	102,723,000	103,377,000	103,377,000	+3,046,000
Metal/nonmetal	39,259,000	40,399,000	41,052,000	41,542,000	41,542,000	+2,283,000
Standards development	1,398,000	1,378,000	1,378,000	1,378,000	1,378,000	-20,000
Assessments	2,497,000	3,802,000	3,082,000	3,802,000	3,802,000	+1,305,000
Educational policy and development	13,359,000	14,475,000	14,475,000	14,475,000	14,475,000	+1,116,000
Technical support	21,683,000	21,977,000	21,977,000	21,977,000	21,977,000	+294,000
Program administration	12,970,000	8,451,000	8,451,000	8,451,000	8,451,000	-4,519,000
Total, Mine Safety and Health Administration	191,497,000	191,898,000	193,858,000	195,002,000	195,002,900	+3,505,000
BUREAU OF LABOR STATISTICS						
SALARIES AND EXPENSES						
Employment and Unemployment Statistics	84,934,000	85,150,000	86,470,000	86,470,000	86,470,000	+1,536,000
Labor Market Information (Trust Funds)	(48,907,000)	(50,227,000)	(51,927,000)	(51,227,000)	(51,927,000)	(+3,020,000)
Prices and cost of living	89,345,000	93,144,000	93,144,000	93,144,000	93,144,000	+3,799,000
Compensation and working conditions	64,305,000	64,211,000	64,211,000	64,461,000	64,461,000	+156,000
Productivity and technology	6,721,000	6,986,000	6,986,000	6,986,000	6,986,000	+265,000
Economic growth and employment projections	4,082,000	4,193,000	4,193,000	4,193,000	4,193,000	+111,000
Executive direction and staff services	25,605,000	26,764,000	26,764,000	26,764,000	26,764,000	+1,159,000
Total, Bureau of Labor Statistics	323,899,000	330,675,000	333,695,000	333,245,060	333,945,000	+10,046,000
Federal Funds	274,992,000	280,448,000	281,768,000	282,018,000	282,018,000	+7,026,000
Trust Funds	(48,907,000)	(50,227,000)	(51,927,000)	(51,227,000)	(52,927,000)	(+3,020,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
DEPARTMENTAL MANAGEMENT						
SALARIES AND EXPENSES						
Executive direction	20,676,000	19,751,000	19,751,000	19,751,000	19,751,000	-925,000
Legal services	58,485,000	59,096,000	59,096,000	59,446,000	59,446,000	+961,000
Trust funds	(326,000)	(332,000)	(332,000)	(332,000)	(332,000)	(+6,000)
International labor affairs	7,590,000	7,572,000	7,572,000	7,942,000	7,942,000	+352,000
Administration and management	15,069,000	14,911,000	14,911,000	14,911,000	14,911,000	-158,000
Adjudication	16,638,000	19,369,000	19,369,000	19,369,000	19,369,000	+2,731,000
Promoting employment of people with disabilities	4,312,000	4,320,000	4,320,000	4,320,000	4,320,000	+8,000
Women's Bureau	7,757,000	7,605,000	7,605,000	7,770,000	7,770,000	+13,000
Civil Rights Activities	4,922,000	4,906,000	4,906,000	4,906,000	4,906,000	-16,000
Chief Financial Officer	6,691,000	4,712,000	4,712,000	4,712,000	4,712,000	-1,979,000
Total, Salaries and expenses	142,466,000	142,574,000	142,574,000	143,459,000	143,459,000	+993,000
Federal funds	142,140,000	142,242,000	142,242,000	143,127,000	143,127,000	+987,000
Trust funds	(326,000)	(332,000)	(332,000)	(332,000)	(332,000)	(+6,000)
VETERANS EMPLOYMENT AND TRAINING						
State Administration:						
Disabled Veterans Outreach Program	(82,004,000)	(84,218,000)	(84,218,000)	(84,218,000)	(84,218,000)	(+2,214,000)
Local Veterans Employment Program	(76,111,000)	(78,166,000)	(78,166,000)	(78,166,000)	(78,166,000)	(+2,055,000)
Subtotal, State Administration	(158,115,000)	(162,384,000)	(162,384,000)	(162,384,000)	(162,384,000)	(+4,269,000)
Federal Administration	(21,309,000)	(21,339,000)	(21,339,000)	(21,339,000)	(21,339,000)	(+30,000)
National Veterans Training Institute	(2,848,000)	(2,925,000)	(2,925,000)	(2,925,000)	(2,925,000)	(+77,000)
Total, Trust Funds	(182,272,000)	(186,648,000)	(186,648,000)	(186,648,000)	(186,648,000)	(+4,376,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
OFFICE OF THE INSPECTOR GENERAL						
Audit:						
Federal funds	20,285,000	19,436,000	19,436,000	19,436,000	19,436,000	-849,000
Trust funds	(3,954,000)	(3,990,000)	(3,990,000)	(3,990,000)	(3,990,000)	(+36,000)
Investigation:						
Federal funds	8,426,000	8,945,000	8,945,000	8,945,000	8,945,000	+519,000
Trust funds	(341,000)	---	---	---	---	(-341,000)
Office of Labor Racketeering	11,632,000	11,690,000	11,690,000	11,690,000	11,690,000	+58,000
Executive Direction and Management	6,641,000	7,144,000	7,144,000	7,144,000	7,144,000	+503,000
Total, Office of the Inspector General	51,279,000	51,205,000	51,205,000	51,205,000	51,205,000	-74,000
Federal funds	46,984,000	47,215,000	47,215,000	47,215,000	47,215,000	+231,000
Trust funds	(4,295,000)	(3,990,000)	(3,990,000)	(3,990,000)	(3,990,000)	(-305,000)
Total, Departmental Management	376,017,000	380,427,000	380,427,000	381,312,000	381,312,000	+5,295,000
Federal funds	189,124,000	189,457,000	189,457,000	190,342,000	190,342,000	+1,218,000
Trust funds	(186,893,000)	(190,970,000)	(190,970,000)	(190,970,000)	(190,970,000)	(+4,077,000)
Total, Labor Department 1/	15,733,027,000	16,563,175,000	14,664,369,000	14,522,075,000	14,615,890,000	-1,117,137,000
Federal funds	12,270,516,000	12,872,261,000	10,972,157,000	10,859,651,000	10,914,538,000	-1,355,978,000
Trust funds	(3,462,511,000)	(3,690,914,000)	(3,692,212,000)	(3,662,424,000)	(3,701,352,000)	(+238,841,000)

1/ Includes Federal and Trust funds.

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
TITLE II - DEPARTMENT OF HEALTH AND HUMAN SERVICES						
HEALTH RESOURCES AND SERVICES ADMINISTRATION						
HEALTH RESOURCES AND SERVICES						
Health Care Delivery and Assistance:						
Community health centers...........................	558,808,000	617,308,000	584,600,000	610,000,000	603,650,000	+44,842,000
Migrant health centers.............................	57,306,000	63,806,000	59,000,000	59,000,000	59,000,000	+1,694,000
Black lung clinics.................................	3,968,000	3,968,000	3,968,000	4,200,000	4,142,000	+174,000
Health care for the homeless.......................	58,014,000	57,960,000	64,014,000	60,000,000	63,011,000	+4,997,000
National Health Service Corps:						
Field placements...................................	42,720,000	44,720,000	44,720,000	46,720,000	44,720,000	+2,000,000
Recruitment..	75,939,000	93,939,000	80,000,000	82,000,000	82,000,000	+6,061,000
Subtotal, Natl Health Service Corps..........	118,659,000	138,659,000	124,720,000	128,720,000	126,720,000	+8,061,000
Grants to communities for scholarships............	478,000	478,000	478,000	478,000	478,000	---
Public housing health service grants...............	8,923,000	8,916,000	8,923,000	8,923,000	8,923,000	---
Hansen's disease services..........................	18,623,000	18,487,000	18,487,000	21,500,000	20,747,000	+2,124,000
Payment to Hawaii, treatment of Hansen's Disease..	2,976,000	2,976,000	2,976,000	2,976,000	2,976,000	---
Native Hawaiian health care........................	3,589,000	3,586,000	3,586,000	4,586,000	4,336,000	+747,000
Pacific Basin initiative...........................	2,556,000	873,000	873,000	3,000,000	2,468,000	-88,000
Alzheimers demonstration grants....................	4,959,000	4,933,000	4,959,000	4,959,000	4,959,000	---
Total, Health Care Delivery & Assistance........	838,859,000	921,950,000	876,584,000	908,342,000	901,410,000	+62,551,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
Maternal and child health:						
Maternal & child health block grant	664,534,000	704,534,000	664,534,000	694,534,000	687,034,000	+22,500,000
Healthy start	79,325,000	100,325,000	98,000,000	100,000,000	97,500,000	+18,175,000
Emergency medical services for children	4,810,000	4,808,000	7,500,000	7,500,000	7,500,000	+2,690,000
Total, Maternal and child health	748,669,000	809,667,000	762,034,000	802,034,000	792,034,000	+43,365,000
Health Professions:						
Exceptional financial need scholarships	10,433,000	10,428,000	10,433,000	10,433,000	10,433,000	---
Centers of excellence	23,481,000	23,442,000	23,481,000	23,481,000	23,481,000	---
Disadvantaged assistance	31,202,000	37,702,000	31,202,000	31,202,000	31,202,000	---
HPSL recapitalization	7,928,000	7,923,000	7,925,000	7,925,000	7,928,000	---
Scholarships for disadvantaged students	17,102,000	17,088,000	17,102,000	17,102,000	17,102,000	---
Faculty loan repayment	1,053,000	1,045,000	1,053,000	1,053,000	1,053,000	---
Public health and preventive medicine	7,265,000	10,692,000	7,265,000	8,000,000	7,816,000	+551,000
Health administration traineeships / projects	1,494,000	995,000	995,000	995,000	995,000	-499,000
Family medicine training / departments	38,194,000	47,194,000	47,194,000	47,194,000	47,194,000	+9,000,000
General dentistry residencies	3,730,000	2,483,000	3,730,000	3,730,000	3,730,000	---
General internal medicine and pediatrics	16,847,000	20,000,000	16,647,000	16,847,000	16,847,000	---
Physician assistants	4,916,000	8,867,000	4,916,000	7,100,000	6,554,000	+1,638,000
Primary care loan program	---	5,088,000	---	---	---	---
Allied health special projects	3,467,000	2,308,000	3,467,000	3,467,000	3,467,000	---
Area health education centers	19,812,000	13,177,000	19,812,000	23,000,000	22,203,000	+2,391,000
Border health training centers	2,836,000	---	2,836,000	2,836,000	2,836,000	---
Geriatric training and education centers	10,013,000	6,661,000	6,661,000	10,913,000	9,175,000	-838,000
Interdisciplinary traineeships	4,017,000	---	---	4,017,000	4,017,000	---
Health professions data system	643,000	3,643,000	643,000	643,000	643,000	---
Research on health professions issues	1,123,000	2,623,000	1,123,000	1,123,000	1,123,000	---
Pediatric medicine	615,000	---	---	615,000	615,000	---
Chiropractic demonstration grants	---	---	---	1,000,000	750,000	+750,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
Nurse training:						
Advanced nurse education........................	12,253,000	8,158,000	12,000,000	12,253,000	12,253,000	---
Nurse practitioners / nurse midwives..........	15,443,000	19,583,000	15,443,000	17,443,000	16,943,000	+1,500,000
Special projects................................	10,401,000	10,500,000	10,401,000	10,401,000	10,401,000	---
Professional nurse traineeships................	13,973,000	19,623,000	13,973,000	15,973,000	15,473,000	+1,500,000
Nurse disadvantaged assistance.................	3,693,000	5,193,000	3,693,000	3,693,000	3,693,000	---
Nurse anesthetists.............................	2,724,000	1,013,000	2,724,000	2,724,000	2,724,000	---
School nurse initiative........................	---	4,000,000	---	---	---	---
Loan repayment for shortage area service......	2,044,000	2,043,000	2,044,000	2,044,000	2,044,000	---
Subtotal, Nurse training.....................	60,531,000	70,913,000	60,278,000	64,531,000	63,531,000	+3,000,000
Total, Health professions....................	266,699,000	292,261,000	266,963,000	286,307,000	282,692,000	+15,993,000
Resources development:						
Organ transplantation..........................	2,767,000	2,652,000	2,652,000	2,652,000	2,652,000	-115,000
Health teaching facilities interest subsidies.....	415,000	415,000	415,000	415,000	415,000	---
Trauma care....................................	4,368,000	4,349,000	4,349,000	5,000,000	4,837,000	+469,000
Total, Resources Development....................	7,550,000	7,416,000	7,416,000	8,067,000	7,904,000	+354,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
Acquired Immune Deficiency Syndrome (AIDS):						
Education and training centers....................	16,435,000	16,435,000	16,435,000	16,435,000	16,435,000	---
Pediatric demonstrations..........................	20,897,000	20,897,000	---	---	---	-20,897,000
Ryan White AIDS Programs:						
Emergency assistance..........................	184,757,000	336,457,000	318,000,000	328,000,000	325,500,000	+140,743,000
Comprehensive care programs...................	115,288,000	233,988,000	183,897,000	183,897,000	183,897,000	+68,609,000
Early intervention program....................	47,968,000	81,560,000	47,968,000	47,968,000	47,968,000	---
Title IV....................................	---	6,000,000	22,000,000	22,000,000	22,000,000	+22,000,000
Subtotal, Ryan White AIDS programs........	348,013,000	658,013,000	571,865,000	581,865,000	579,365,000	+231,352,000
AIDS dental services..............................	---	---	7,000,000	7,000,000	7,000,000	+7,000,000
Subtotal, AIDS...........................	385,345,000	695,345,000	595,300,000	605,300,000	602,800,000	+217,455,000
Family planning..	173,418,000	200,418,000	173,418,000	183,418,000	180,918,000	+7,500,000
Rural health research....................................	4,176,000	4,176,000	4,176,000	11,176,000	9,426,000	+5,250,000
Rural outreach grants....................................	24,779,000	24,779,000	24,779,000	26,779,000	26,279,000	+1,500,000
Buildings and facilities.................................	902,000	942,000	942,000	942,000	942,000	+40,000
National practitioner data bank..........................	6,000,000	7,500,000	7,500,000	7,500,000	7,500,000	+1,500,000
User fees..	-6,000,000	-7,500,000	-7,500,000	-7,500,000	-7,500,000	-1,500,000
Program management.......................................	121,487,000	121,976,000	121,976,000	121,976,000	121,976,000	+489,000
Total, Health resources and services............	2,571,964,000	3,086,930,000	2,833,580,000	2,954,341,000	2,926,381,000	+354,417,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
MEDICAL FACILITIES GUARANTEE AND LOAN FUND:						
Interest subsidy program..........................	10,900,000	9,000,000	9,000,000	9,000,000	9,000,000	-1,900,000
HEALTH EDUCATION ASSISTANCE LOANS PROGRAM (HEAL):						
New loan subsidies................................	22,202,000	23,512,000	23,512,000	23,512,000	23,512,000	+1,310,000
Liquidating account (non-add).....................	(47,631,000)	(64,878,000)	(64,878,000)	(64,878,000)	(64,878,000)	(+17,247,000)
HEAL loan limitation (non-add)....................	(340,000,000)	(375,000,000)	(375,000,000)	(375,000,000)	(375,000,000)	(+35,000,000)
Program management................................	2,946,000	2,946,000	2,946,000	2,946,000	2,946,000	---
Total, HEAL.....................................	25,148,000	26,458,000	26,458,000	26,458,000	26,458,000	+1,310,000
VACCINE INJURY COMPENSATION PROGRAM TRUST FUND:						
Post - FY88 claims (trust fund)...................	54,740,000	84,180,000	84,180,000	84,180,000	84,180,000	+29,440,000
HRSA administration (trust fund)..................	2,500,000	2,500,000	2,500,000	3,000,000	3,000,000	+500,000
Subtotal, Vaccine injury compensation trust fund	57,240,000	86,680,000	86,680,000	87,180,000	87,180,000	+29,940,000
VACCINE INJURY COMPENSATION:						
Pre - FY89 claims (appropriation).................	110,000,000	80,000,000	80,000,000	110,000,000	110,000,000	---
Total, Vaccine injury...........................	167,240,000	166,680,000	166,680,000	197,180,000	197,180,000	+29,940,000
Total, Health Resources & Services Admin........	2,775,252,000	3,289,068,000	3,035,726,000	3,186,979,000	3,159,019,000	+383,767,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
CENTERS FOR DISEASE CONTROL						
DISEASE CONTROL, RESEARCH AND TRAINING						
Preventive Health Services Block Grant................	148,743,000	148,743,000	148,743,000	160,000,000	157,186,000	+8,443,000
Prevention centers....................................	5,456,000	5,456,000	5,456,000	7,500,000	6,989,000	+1,533,000
Sexually transmitted diseases:						
Grants..	78,042,000	78,042,000	78,042,000	80,000,000	79,511,000	+1,469,000
Infertility program............................	---	14,000,000	5,000,000	10,000,000	8,750,000	+8,750,000
Direct operations................................	11,510,000	11,510,000	11,510,000	11,510,000	11,510,000	---
Subtotal, Sexually transmitted diseases.........	89,552,000	103,552,000	94,552,000	101,510,000	99,771,000	+10,219,000
Immunization:						
Grants..	287,820,000	557,620,000	377,000,000	482,000,000	455,750,000	+167,930,000
Direct operations................................	50,868,000	107,568,000	70,000,000	70,000,000	70,000,000	+19,132,000
Adverse events reporting.........................	2,393,000	2,393,000	2,393,000	2,393,000	2,393,000	---
Subtotal, Immunization programs.................	341,081,000	667,581,000	449,393,000	554,393,000	528,143,000	+187,062,000
Infectious disease....................................	40,282,000	40,282,000	40,282,000	50,282,000	47,782,000	+7,500,000
Tuberculosis:						
Grants..	73,566,000	123,566,000	115,000,000	101,000,000	111,500,000	+37,934,000
Program operations...............................	5,269,000	5,269,000	5,269,000	5,269,000	5,269,000	---
Subtotal, Tuberculosis..........................	78,835,000	128,835,000	120,269,000	106,269,000	116,769,000	+37,934,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
Acquired Immune Deficiency Syndrome (AIDS)............	498,253,000	543,253,000	543,253,000	543,253,000	543,253,000	+45,000,000
Chronic and environmental disease prevention..........	70,117,000	92,117,000	108,017,000	120,000,000	123,004,000	+52,887,000
Lead poisoning prevention.............................	29,683,000	29,683,000	34,683,500	34,683,000	34,683,000	+5,000,000
Breast and cervical cancer screening..................	71,303,000	85,303,000	72,303,000	80,000,000	78,076,000	+6,773,000
Injury control..	31,000,000	41,000,000	31,000,000	41,000,000	38,500,000	+7,500,000
Occupational Safety and Health (NIOSH):						
Research..	101,252,000	111,252,000	104,000,000	119,252,000	115,439,000	+14,187,000
Training..	11,092,000	11,092,000	12,592,000	13,000,000	12,898,000	+1,806,000
Subtotal, NIOSH.......................................	112,344,000	122,344,000	116,592,000	132,252,000	128,337,000	+15,993,000
Epidemic services.....................................	73,520,000	73,520,000	73,520,000	73,520,000	73,520,000	---
National Center for Health Statistics:						
Program operations....................................	48,605,000	56,605,000	48,605,000	52,605,000	51,605,000	+3,000,000
Program support.......................................	2,927,000	2,927,000	2,927,000	2,927,000	2,927,000	---
1% evaluation funds (non-add).........................	(28,873,000)	(28,873,000)	(28,873,000)	(28,873,000)	(28,873,000)	---
Subtotal, health statistics...........................	51,532,000	59,532,000	51,532,000	55,532,000	54,532,000	+3,000,000
Buildings and facilities..............................	16,640,000	16,640,000	16,640,000	16,640,000	16,640,000	---
Program management....................................	3,388,500	3,131,000	3,131,000	3,131,000	3,131,500	-257,000
Total, Disease Control................................	1,662,845,000	2,161,788,000	1,810,182,000	2,000,701,000	2,051,132,000	+388,287,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
NATIONAL INSTITUTES OF HEALTH (INCLUDES AIDS)						
National Cancer Institute	1,978,341,000	2,041,324,000	2,082,267,000	2,082,267,000	2,082,267,000	+103,926,000
Forward funding (FY95 - FY97)	---	100,798,000	---	---	---	---
National Heart, Lung, and Blood Institute	1,214,715,000	1,198,402,000	1,277,880,000	1,277,880,000	1,277,880,000	+63,165,000
National Institute of Dental Research	161,141,000	163,009,000	169,520,000	169,520,000	169,520,000	+8,379,000
National Institute of Diabetes and Digestive and Kidney Diseases	680,660,000	671,284,000	716,054,000	716,054,000	716,054,000	+35,394,000
Forward funding (FY95 - FY97)	---	5,851,000	---	---	---	---
National Institute of Neurological Disorders and Stroke	599,477,000	590,065,000	630,650,000	630,650,000	630,650,000	+31,173,000
National Institute of Allergy and Infectious Diseases	984,210,000	1,065,583,000	1,065,583,000	1,065,583,000	1,065,583,000	+81,373,000
National Institute of General Medical Sciences	832,235,000	825,897,000	875,511,000	875,511,000	875,511,000	+43,276,000
Forward funding (FY95 - FY97)	---	7,167,000	---	---	---	---
National Institute of Child Health and Human Development	527,752,000	539,464,000	555,195,000	555,195,000	555,195,000	+27,443,000
Forward funding (FY95 - FY97)	---	2,893,000	---	---	---	---
National Eye Institute	275,913,000	272,201,000	290,260,000	290,260,000	290,260,000	+14,347,000
National Institute of Environmental Health Sciences	251,187,000	253,358,000	264,249,000	264,249,000	264,249,000	+13,062,000
Forward funding (FY95 - FY97)	---	7,950,000	---	---	---	---
National Institute on Aging	399,528,000	392,615,000	420,303,000	420,303,000	420,303,000	+20,775,000
Forward funding (FY95 - FY97)	---	1,541,000	---	---	---	---
National Institute of Arthritis and Musculoskeletal and Skin Diseases	212,243,000	210,382,000	223,280,000	223,280,000	223,280,000	+11,037,000
National Institute on Deafness and Other Communication Disorders	154,775,000	153,088,000	162,823,000	162,823,000	162,823,000	+8,048,000
National Institute of Nursing Research	48,496,000	48,975,000	51,018,000	51,018,000	51,018,000	+2,522,000
National Institute on Alcohol Abuse and Alcoholism	176,442,000	173,615,000	185,617,000	185,617,000	185,617,000	+9,175,000
National Institute on Drug Abuse	404,183,000	407,098,000	425,201,000	425,201,000	425,201,000	+21,018,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
National Institute of Mental Health....................	583,122,000	576,015,000	613,444,000	613,444,000	613,444,000	+30,322,000
National Center for Research Resources................	312,657,000	324,625,000	328,915,000	332,915,000	331,915,000	+19,258,000
Forward funding (FY95 - FY97)......................	---	3,262,000	---	---	---	---
National Center for Human Genome Research.............	106,134,000	131,925,000	119,030,000	131,925,000	128,701,000	+22,567,000
Forward funding (FY95 - FY97)......................	---	2,624,000	---	---	---	---
John E. Fogarty International Center..................	19,715,000	19,988,000	22,240,000	19,980,000	21,677,000	+1,962,000
National Library of Medicine..........................	103,613,000	133,349,000	118,401,000	120,481,000	119,981,000	+16,368,000
Office of the Director................................	190,334,000	234,907,000	224,746,000	241,225,000	233,605,000	+43,271,000
Buildings and facilities..............................	108,731,000	108,731,000	114,385,000	101,000,000	111,039,000	+2,308,000
Total N.I.H..	10,325,604,000	10,667,984,000	10,936,652,000	10,956,389,000	10,955,773,000	+630,169,000
Current year, FY 1994........................	(10,325,604,000)	(10,535,898,000)	(10,936,652,000)	(10,956,389,000)	(10,955,773,000)	(+630,169,000)
Forward funding (FY95 - FY97)................	---	(132,006,000)	---	---	---	---

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION						
Center for Mental Health Services:						
Mental Health Block Grant	277,919,000	277,919,000	267,919,000	277,919,000	277,919,000	---
Children's mental health	4,903,000	4,903,000	40,000,000	15,000,000	35,000,000	+30,097,000
Clinical training	2,956,000	2,956,000	---	2,956,000	2,500,000	-456,000
AIDS training	2,987,000	2,987,000	2,943,000	2,987,000	2,943,000	-44,000
Community support demonstrations	24,402,000	24,402,000	24,402,000	24,402,000	24,402,000	---
Grants to States for the homeless (PATH)	29,462,000	29,462,000	29,462,000	29,462,000	29,462,000	---
Homeless services demonstrations	21,419,000	21,419,000	21,419,000	21,419,000	21,419,000	---
Protection and advocacy	20,832,000	20,832,000	20,832,000	22,332,000	21,957,000	+1,125,000
AIDS demonstrations	---	---	2,000,000	---	1,000,000	+1,000,000
Subtotal, mental health	384,880,000	384,800,000	400,977,000	396,477,000	417,102,000	+32,222,000
Center for Substance Abuse Treatment:						
Substance abuse block grant	1,107,899,000	1,130,509,000	1,096,899,000	1,190,509,000	1,167,107,000	+59,208,000
Transfer from forfeiture fund (non-add)	---	---	---	(10,000,000)	(10,000,000)	(+10,000,000)
Treatment grants to crisis areas	34,848,000	34,848,000	34,848,000	34,848,000	34,848,000	---
Treatment improvement demos:						
Pregnant/post partum women and children	43,638,000	49,228,000	49,228,000	49,228,000	49,228,000	+5,590,000
Transfer from forfeiture fund (non-add)	(5,000,000)	---	---	(5,000,000)	(5,000,000)	---
Campus program	18,395,000	9,395,000	9,395,000	9,395,000	9,395,000	-9,000,000
Criminal justice program	32,990,000	32,990,000	32,990,000	33,990,000	33,990,000	+1,000,000
Critical populations	44,681,000	44,681,000	44,681,000	43,681,000	43,681,000	-1,000,000
Comprehensive community treatment program	16,573,000	26,773,000	27,773,000	26,773,000	27,523,000	+10,950,000
Transfer from forfeiture fund (non-add)	(4,700,000)	---	---	---	---	(-4,700,000)
Training	5,429,000	5,429,000	5,429,000	5,429,000	5,429,000	---

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
AIDS demonstration & training:						
Training	2,812,000	2,812,000	2,812,000	2,812,000	2,812,000	---
Linkage	7,809,000	7,809,000	7,809,000	7,809,000	7,809,000	---
Outreach	10,535,000	10,535,000	10,535,000	10,535,000	10,535,000	---
Treatment capacity expansion program	---	80,872,000	22,072,000	---	10,000,000	+10,000,000
Transfer from forfeiture fund (non-add)	(15,300,000)	---	---	(18,000,000)	---	(-15,300,000)
Subtotal, Substance Abuse Treatment	1,325,609,500	1,443,801,000	1,344,471,000	1,415,009,000	1,402,357,000	+76,748,000
Center for Substance Abuse Prevention:						
Prevention demonstrations:						
High risk youth	56,295,000	69,295,000	61,295,000	65,295,000	63,295,000	+7,000,000
Pregnant women & infants	50,212,000	43,440,000	43,440,000	43,440,000	43,440,000	-6,772,000
Other programs	18,483,000	18,483,000	17,483,000	17,483,000	17,483,000	-1,000,000
Community partnership	96,040,000	116,741,000	104,741,000	104,741,000	104,741,000	+8,701,000
Transfer from forfeiture fund (non-add)	(8,701,000)	---	---	(10,500,000)	(10,000,000)	(+1,299,000)
Training	14,512,500	14,512,500	14,512,000	14,512,000	14,512,000	---
Subtotal, Substance Abuse Prevention	235,542,000	262,471,000	241,471,000	245,471,000	243,471,000	+7,929,000
Buildings and facilities	952,000	952,000	952,000	952,000	952,000	---
Program management	57,820,000	61,296,000	61,296,000	61,296,000	61,296,000	+3,476,000
Total, Substance Abuse & Mental Health	2,004,803,000	2,193,480,000	2,057,167,000	2,119,205,000	2,125,170,000	+120,375,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
ASSISTANT SECRETARY FOR HEALTH						
OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH						
Population affairs: Adolescent family life..........	7,598,000	7,591,500	7,591,000	7,000,000	7,000,000	-598,000
Health Initiatives:						
Office of Disease Prevention and Health Promotion..........	4,778,000	4,771,000	4,771,000	4,771,000	4,771,000	-7,000
Physical fitness and sports..........	1,453,000	1,453,000	1,453,000	1,453,000	1,453,000	---
Minority health..........	20,398,000	20,398,000	20,398,000	20,398,000	20,398,000	---
National vaccine program..........	2,737,000	8,737,500	2,737,000	2,737,000	2,737,000	---
Office of research integrity..........	---	6,000,000	4,000,000	4,000,000	4,000,000	+4,000,000
Office of women's health..........	---	1,000,000	1,000,000	1,000,000	1,000,000	+1,000,000
Emergency preparedness..........	---	3,000,000	1,500,000	2,000,000	2,250,000	+2,250,000
Health care reform data analysis..........	---	5,000,000	3,000,000	3,000,000	3,000,000	+3,000,000
Health Service Management..........	21,379,000	21,379,000	19,379,000	21,379,000	20,379,000	-1,000,000
National AIDS program office..........	2,936,000	2,929,000	2,929,000	2,929,000	2,929,000	-7,000
Total, OASH..........	61,279,000	87,258,000	68,758,000	71,167,000	69,917,000	+8,638,000
PUBLIC HEALTH EMERGENCY FUND						
Public health emergency fund..........	6,000,000	---	---	---	---	-6,000,000
Flood relief supplemental..........	75,000,000	---	---	---	---	-75,000,000
RETIREMENT PAY AND MEDICAL BENEFITS FOR COMMISSIONED OFFICERS						
Retirement payments..........	109,462,000	119,660,000	119,660,000	119,660,000	119,660,000	+10,198,000
Survivors benefits..........	6,835,000	7,856,000	7,856,000	7,856,000	7,856,000	+1,021,000
Dependent's medical care..........	21,565,000	22,665,000	22,665,000	22,665,000	22,665,000	+1,100,000
Military Services Credits..........	2,900,000	2,879,000	2,879,000	2,879,000	2,879,000	-21,000
Total, Retirement pay and medical benefits..........	140,762,000	153,060,000	153,060,000	153,060,000	153,060,000	+12,298,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
AGENCY FOR HEALTH CARE POLICY AND RESEARCH						
Health services research:						
Research	29,121,000	45,042,000	43,121,000	48,042,000	46,812,000	+17,691,000
Trust funds	(994,000)	(994,000)	(994,000)	(994,000)	(994,000)	---
AIDS	9,624,000	11,700,000	10,624,000	10,624,000	10,624,000	+1,000,000
1% evaluation funding (non-add)	(13,204,000)	(13,204,000)	(13,204,000)	(13,204,000)	(13,204,000)	---
Subtotal including trust funds & 1% funds	(52,943,000)	(70,940,000)	(67,943,000)	(72,864,000)	(71,634,000)	(+18,691,000)
Medical treatment effectiveness:						
Federal funds	67,875,000	79,872,000	72,875,000	78,208,000	75,542,000	+7,667,000
Trust funds	(4,792,000)	(4,792,000)	(4,792,000)	(4,792,000)	(4,792,000)	---
Subtotal, Medical treatment effectiveness	(72,667,000)	(84,664,000)	(77,667,000)	(83,000,000)	(80,334,000)	(+7,667,000)
Program support	2,431,000	2,431,000	2,431,000	2,431,000	2,431,000	---
Total, Health Care Policy and Research:						
Federal Funds	109,051,000	139,045,000	129,051,000	139,305,000	135,409,000	+26,358,000
Trust funds	(5,786,000)	(5,786,000)	(5,786,000)	(5,786,000)	(5,786,000)	---
Total, 1% evaluation funding (non-add)	(13,204,000)	(13,204,000)	(13,204,000)	(13,204,000)	(13,204,000)	---
Total, Health Care Policy & Research (non-add)	(128,041,000)	(158,035,000)	(148,041,000)	(158,295,000)	(154,399,000)	(+26,358,000)
Total, Public Health Service:						
Federal Funds	17,160,296,000	18,651,683,000	18,290,596,000	18,714,086,000	18,649,488,000	+1,489,192,000
Trust funds	(5,786,000)	(5,786,000)	(5,786,000)	(5,786,000)	(5,786,000)	---

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
HEALTH CARE FINANCING ADMINISTRATION						
GRANTS TO STATES FOR MEDICAID						
Medicaid current law benefits	79,697,500,000	85,733,613,000	85,733,613,000	85,733,613,000	85,733,613,000	+6,036,113,000
State and local administration	2,898,150,000	3,343,800,000	3,343,800,000	3,343,800,000	3,343,800,000	+445,650,000
Subtotal, Medicaid program level, FY 1994	82,595,650,000	89,077,413,000	89,077,413,000	89,077,413,000	89,077,413,000	+6,481,763,000
Less funds advanced in prior year	-17,100,000,000	-24,600,000,000	-24,600,000,000	-24,600,000,000	-24,600,000,000	-7,500,000,000
Total, request, FY 1994	65,495,650,000	64,477,413,000	64,477,413,000	64,477,413,000	64,477,413,000	-1,018,237,000
New advance, 1st quarter, FY 1995	24,600,000,000	26,600,000,000	---	26,600,000,000	26,600,000,000	+2,000,000,000
PAYMENTS TO HEALTH CARE TRUST FUNDS						
Supplemental medical insurance	45,478,000,000	45,097,000,000	45,097,000,000	45,097,000,000	45,097,000,000	-381,000,000
Hospital insurance for the uninsured	325,000,000	458,000,000	458,000,000	458,000,000	458,000,000	+130,000,000
Federal uninsured payment	39,000,000	48,000,000	48,000,000	48,000,000	48,000,000	+9,000,000
Program management	117,862,000	128,440,000	128,440,000	128,440,000	128,440,000	+10,578,000
Total, Payment to Trust Funds, current law	45,962,862,000	45,731,440,000	45,731,440,000	45,731,440,000	45,731,440,000	-231,422,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
PROGRAM MANAGEMENT						
Research, demonstration, and evaluation:						
Regular program, trust funds	(35,951,000)	(36,000,000)	(41,000,000)	(44,000,000)	(43,250,000)	(+7,299,000)
Counseling program	(9,920,000)	(9,920,000)	(9,920,000)	(9,920,000)	(9,920,000)	---
Rural hospital transition demonstrations, trust funds	(22,816,000)	(10,000,000)	(16,000,000)	(22,816,000)	(21,112,000)	(-1,704,000)
Essential access community hospitals, trust funds	---	(11,000,000)	---	(10,000,000)	(10,000,000)	(+10,000,000)
New rural health grants	---	(1,700,000)	(1,700,000)	(1,700,000)	(1,700,000)	(+1,700,000)
Subtotal, research, demonstration, & evaluation	(68,687,000)	(68,620,000)	(68,620,000)	(88,436,000)	(85,982,000)	(+17,295,000)
Medicare Contractors (Trust Funds)	(1,600,362,000)	(1,615,300,000)	(1,615,300,000)	(1,615,300,000)	(1,615,300,000)	(+14,938,000)
State Survey and Certification:						
Medicare certification, trust funds	(148,009,000)	(145,800,000)	(145,800,000)	(145,800,000)	(145,800,000)	(-2,209,000)
Federal Administration:						
Trust funds	(333,693,000)	(347,903,000)	(343,000,000)	(343,000,000)	(343,000,000)	(+9,307,000)
Less current law user fees	(-122,000)	(-122,000)	(-122,000)	(-122,000)	(-122,000)	---
Subtotal, Federal Administration	(333,571,000)	(347,781,000)	(342,878,000)	(342,878,000)	(342,878,000)	(+9,307,000)
Total, Program management	(2,150,629,000)	(2,177,501,000)	(2,172,598,000)	(2,192,414,000)	(2,189,960,000)	(+39,331,000)
HMO LOAN AND LOAN GUARANTEE FUND	13,800,000	---	---	---	---	-13,800,000
Total, Health Care Financing Administration:						
Federal funds	135,472,312,000	136,208,853,000	110,208,853,000	136,208,853,000	136,208,853,000	+736,541,000
Current year, FY 1994	(111,472,312,000)	(110,208,853,000)	(110,208,853,000)	(110,208,853,000)	(110,208,853,000)	(-1,263,459,000)
New advance, 1st quarter, FY 1995	(24,000,000,000)	(26,000,000,000)	---	(26,000,000,000)	(26,000,000,000)	(+2,000,000,000)
Trust funds	(2,150,629,000)	(2,177,501,000)	(2,172,598,000)	(2,192,414,000)	(2,189,960,000)	(+39,331,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
SOCIAL SECURITY ADMINISTRATION						
PAYMENTS TO SOCIAL SECURITY TRUST FUNDS	45,242,000	28,178,000	28,178,000	28,178,000	28,178,000	-17,064,000
SPECIAL BENEFITS FOR DISABLED COAL MINERS						
Benefit payments	800,437,000	766,000,000	766,000,000	766,000,000	766,000,000	-34,437,000
Administration	4,951,000	5,181,000	5,181,000	5,181,000	5,181,000	+230,000
Subtotal, Black Lung, FY 1994 program level	805,388,000	771,181,000	771,181,000	771,181,000	771,181,000	-34,207,000
Less funds advanced in prior year	-198,000,000	-196,000,000	-196,000,000	-196,000,000	-196,000,000	+2,000,000
Total, Black Lung, current request, FY 1994	607,388,000	575,181,000	575,181,000	575,181,000	575,181,000	-32,207,000
New advance, 1st quarter, FY 1995	196,000,000	190,000,000	---	190,000,000	190,000,000	-6,000,000
SUPPLEMENTAL SECURITY INCOME						
Federal benefit payments	21,810,096,000	25,476,000,000	25,476,000,000	25,476,000,000	25,476,000,000	+3,667,904,000
Beneficiary services	47,600,000	51,600,000	51,600,000	51,600,000	51,600,000	+4,000,000
Research demonstration	12,625,000	6,700,000	6,700,000	12,700,000	12,700,000	+75,000
Administration	1,476,450,000	1,690,475,000	1,690,475,000	1,690,475,000	1,690,475,000	+214,025,000
Investment proposals:						
Automation investment initiative	---	45,000,000	45,000,000	30,000,000	41,000,000	+41,000,000
Disability investment initiative	---	60,000,000	60,000,000	60,000,000	60,000,000	+60,000,000
Subtotal, SSI FY 1994 program level	23,346,771,000	27,331,775,000	27,331,775,000	27,322,775,000	27,333,775,000	+3,987,004,000
Less funds advanced in prior year	-5,240,000,000	-7,150,000,000	-7,150,000,000	-7,150,000,000	-7,150,000,000	-1,910,000,000
Total, SSI, current request, FY 1994	18,106,771,000	20,181,775,000	20,181,775,000	20,172,775,000	20,183,775,000	+2,077,004,000
New advance, 1st quarter, FY 1995	7,150,000,000	6,770,000,000	---	6,770,000,000	6,770,000,000	-380,000,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
LIMITATION ON ADMINISTRATIVE EXPENSES (Trust Funds)...	(4,028,125,000)	(5,376,887,000)	(4,781,887,000)	(4,871,887,000)	(4,751,887,000)	(+723,762,000)
Notch Commission..................................	---	---	---	(1,800,000)	(1,800,000)	(+1,800,000)
Portion treated as budget authority..............	(696,576,000)	(742,398,000)	(742,398,000)	(542,398,000)	(742,398,000)	(+45,822,000)
Subtotal, LAE operating level....................	(4,724,701,000)	(6,119,285,000)	(5,524,285,000)	(5,416,085,000)	(5,496,085,000)	(+771,384,000)
(Contingency reserve)	(98,400,000)	---	---	---	---	(-98,400,000)
Subtotal, LAE....................................	(4,823,101,000)	(6,119,285,000)	(5,524,285,000)	(5,416,085,000)	(5,496,085,000)	(+672,984,000)
Total, Social Security Administration: Federal funds................................	26,105,401,000	27,745,134,000	20,785,134,000	27,736,134,000	27,747,134,000	+1,641,733,000
Current year FY 1994....................	(18,759,401,000)	(20,785,134,000)	(20,785,134,000)	(20,776,134,000)	(20,787,134,000)	(+2,027,733,000)
New advances, 1st quarter FY 1995.......	(7,346,000,000)	(6,960,000,000)	---	(6,960,000,000)	(6,960,000,000)	(-386,000,000)
Trust funds.................................	(4,823,101,000)	(6,119,285,000)	(5,524,285,000)	(5,416,085,000)	(5,496,085,000)	(+672,984,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
ADMINISTRATION FOR CHILDREN AND FAMILIES						
FAMILY SUPPORT PAYMENTS TO STATES						
Aid to Families with Dependent Children (AFDC)........	12,443,069,000	12,662,000,000	12,662,000,000	12,662,000,000	12,662,000,000	+218,931,000
Quality control liabilities..........................	---	-68,856,000	-68,856,000	-68,856,000	-68,856,000	-68,856,000
Payments to territories..............................	15,532,000	15,532,000	15,532,000	15,532,000	15,532,000	---
Emergency assistance.................................	102,000,000	149,000,000	149,000,000	149,000,000	149,000,000	+47,000,000
Repatriation...	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	---
State and local welfare administration...............	1,411,000,000	1,504,000,000	1,504,000,000	1,504,000,000	1,504,000,000	+93,000,000
Work activities child care...........................	395,000,000	450,000,000	450,000,000	450,000,000	450,000,000	+55,000,000
Transitional child care..............................	84,000,000	95,000,000	95,000,000	95,000,000	95,000,000	+11,000,000
At risk child care...................................	377,761,000	300,000,000	300,000,000	300,000,000	300,000,000	-77,761,000
Subtotal, Welfare payments......................	14,829,362,000	15,107,676,000	15,107,676,000	15,107,676,000	15,107,676,000	+278,314,000
Child Support Enforcement:						
State and local administration....................	1,559,000,000	1,746,000,000	1,746,000,000	1,746,000,000	1,746,000,000	+187,000,000
Federal incentive payments........................	379,000,000	415,000,000	415,000,000	415,000,000	415,000,000	+36,000,000
Less federal share collections....................	-1,160,000,000	-1,265,000,000	-1,265,000,000	-1,265,000,000	-1,265,000,000	-105,000,000
Subtotal, Child support.......................	778,000,000	896,000,000	896,000,000	896,000,000	896,000,000	+118,000,000
Surplus budget authority.............................	87,710,000	-87,710,000	-87,710,000	-87,710,000	-87,710,000	-175,420,000
Total, Payments, FY94 program level.............	15,695,072,000	15,915,966,000	15,915,966,000	15,915,966,000	15,915,966,000	+220,894,000
Less funds advanced in previous years.........	-4,000,000,000	-4,000,000,000	-4,000,000,000	-4,000,000,000	-4,000,000,000	---
Total, Payments, current request, FY 1994.......	11,695,072,000	11,915,966,000	11,915,966,000	11,915,966,000	11,915,966,000	+220,894,000
New advance, 1st quarter, FY 1995...........	4,000,000,000	4,200,000,000	---	4,200,000,000	4,200,000,000	+200,000,000
PAYMENTS TO STATES FOR AFDC WORK PROGRAMS.............	1,000,000,000	1,100,000,000	1,100,000,000	1,100,000,000	1,100,000,000	+100,000,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
LOW INCOME HOME ENERGY ASSISTANCE						
Regular program..	663,812,000	70,000,000	---	---	---	-663,812,000
Additional appropriation 9/30......................	682,218,000	---	---	---	---	-682,218,000
Emergency allocation 1/..............................	(600,000,000)	---	---	(600,000,000)	(600,000,000)	---
Advance from prior year (non-add).................	---	(1,437,400,000)	(1,437,400,000)	(1,437,400,000)	(1,437,400,000)	(+1,437,400,000)
FY 1994 program level (non-add)........................	(1,346,030,000)	(1,507,400,000)	(1,437,400,000)	(1,437,400,000)	(1,437,400,000)	(+91,370,000)
Advance funding (FY 1995).............................	1,437,400,000	1,404,780,000	---	1,507,400,000	1,475,000,000	+37,592,000
REFUGEE AND ENTRANT ASSISTANCE						
Transitional and medical services.....................	245,811,000	264,382,000	264,330,000	264,330,000	264,330,000	+18,519,000
Social services...	80,802,000	80,802,000	80,802,000	80,802,000	80,802,000	---
Preventive health.......................................	5,471,000	5,471,000	5,471,000	5,471,000	5,471,000	---
Targeted assistance....................................	49,397,000	69,397,000	49,397,000	49,397,000	49,397,000	---
Total, Refugee and entrant assistance...........	381,481,000	420,052,000	400,000,000	400,000,000	400,000,000	+18,519,000

1/ For FY 1994 - Available only upon submission of a formal budget request designating the need for funds as an emergency as defined by the BEA.

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
STATE LEGALIZATION IMPACT ASSISTANCE GRANTS 1/						
Current year	-812,000,000	---	---	---	---	+812,000,000
Advance funding	812,000,000	---	---	---	---	-812,000,000
COMMUNITY SERVICES BLOCK GRANT						
Grants to States for Community Services	372,000,000	372,000,000	372,000,000	390,000,000	385,500,000	+13,500,000
Homeless services grants	19,840,000	19,840,000	19,840,000	19,840,000	19,840,000	---
Discretionary funds:						
Community economic development	20,733,000	20,733,000	20,733,000	23,733,000	22,233,000	+1,500,000
Rural housing	4,960,000	4,960,000	4,960,000	5,960,000	5,460,000	+500,000
Farmworker assistance	2,947,000	2,947,000	2,947,000	2,947,000	2,947,000	---
National youth sports	9,424,000	9,424,000	12,000,000	12,000,000	12,000,000	+2,576,000
Technical assistance	219,000	219,000	219,000	1,225,000	300,000	+81,000
Subtotal, discretionary funds	38,283,000	38,283,000	40,859,000	45,865,000	42,940,000	+4,657,000
Demonstration Partnerships	3,804,000	3,804,000	8,000,000	8,000,000	8,000,000	+4,196,000
Community Food and Nutrition	6,944,000	6,944,000	6,944,000	8,944,000	7,944,000	+1,000,000
Total, Community services	440,871,000	440,871,000	447,643,000	472,649,000	464,224,000	+23,353,000
GRANTS TO STATES FOR CHILD CARE						
Block grants to States	892,711,000	932,711,000	892,711,000	892,711,000	892,711,000	---
(Base program)	(892,711,000)	(892,711,000)	(892,711,000)	(892,711,000)	(892,711,000)	---
SOCIAL SERVICES BLOCK GRANT (TITLE XX)	2,800,000,000	2,800,000,000	2,800,000,000	3,800,000,000	3,800,000,000	+1,000,000,000

1/ FY92 bill delayed availability of $1,137,672,216 from FY92 to FY93.

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
CHILDREN AND FAMILIES SERVICES PROGRAMS						
Programs for Children, Youth, and Families:						
Head start	2,776,285,000	4,150,245,000	3,276,285,000	3,376,285,000	3,326,285,000	+550,000,000
Comprehensive child development centers	46,790,000	46,790,000	46,790,000	46,790,000	46,790,000	---
Child development associate scholarships	1,372,000	1,372,000	1,372,000	1,372,000	1,372,000	---
Runaway and homeless youth	35,110,000	35,110,000	36,110,000	36,110,000	36,110,000	+1,000,000
Runaway youth - transitional living	11,785,000	11,785,000	12,200,000	12,200,000	12,200,000	+415,000
Runaway youth activities - drugs	14,603,000	14,603,000	14,603,000	14,603,000	14,603,000	---
Youth gang substance abuse	10,647,000	10,647,000	10,647,000	10,647,000	10,647,000	---
Child abuse state grants	20,354,000	20,354,000	20,354,000	25,354,000	22,854,000	+2,500,000
Child abuse discretionary activities	15,927,000	15,927,000	15,927,000	15,927,000	15,927,000	---
Child abuse challenge grants	5,270,000	5,270,000	5,270,000	5,270,000	5,270,000	---
ABCAN	300,000	300,000	300,000	300,000	300,000	---
Temporary childcare/crisis nurseries	11,942,000	11,942,000	11,942,000	11,942,000	11,942,000	---
Abandoned infants assistance	13,563,000	13,563,000	13,563,000	15,863,000	14,863,000	+1,000,000
Dependent care planning and development	12,939,000	12,939,000	12,939,000	12,939,000	12,939,000	---
Emergency protection grants - substance abuse	19,039,000	19,039,000	19,039,000	19,039,000	19,039,000	---
Child welfare services	294,624,000	294,624,000	294,624,000	294,624,000	294,624,000	---
Child welfare training	4,441,000	4,441,000	4,441,000	4,441,000	4,441,000	---
Child welfare research	6,467,000	6,467,000	6,467,000	6,467,000	6,467,000	---
Adoption opportunities	12,163,000	12,163,000	12,163,000	12,163,000	12,163,000	---

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
Family violence	24,679,000	24,679,000	24,679,000	28,679,000	27,679,000	+3,000,000
Social services research	13,828,000	18,954,000	13,828,000	13,828,000	13,828,000	---
Family support centers	6,875,000	6,874,000	6,874,000	7,874,000	7,374,000	+499,000
Family resource centers	4,910,000	4,910,000	5,910,000	5,910,000	5,910,000	+1,000,000
Developmental disabilities program:						
State grants	67,372,000	67,372,000	67,372,000	70,000,000	69,343,000	+1,971,000
Protection and advocacy	22,506,000	22,506,000	22,506,000	25,000,000	23,753,000	+1,247,000
Developmental disabilities special projects	3,034,000	3,034,000	3,034,000	4,534,000	3,764,000	+730,000
Developmental disabilities university affiliated programs	16,125,000	16,125,000	16,125,000	19,000,000	18,281,000	+2,156,000
Subtotal, Developmental disabilities	109,037,000	109,037,000	109,037,000	118,534,000	115,161,000	+6,124,000
Native American Programs	34,507,000	34,507,000	34,507,000	40,000,000	38,627,000	+4,120,000
Program direction	150,935,000	167,935,000	159,935,000	159,935,000	159,935,000	+9,000,000
Total, Children and Families Services Programs	3,650,392,000	5,051,477,000	4,169,806,000	4,296,796,000	4,237,050,000	+578,658,000
FAMILY SUPPORT AND PRESERVATION	---	60,000,000	---	60,000,000	60,000,000	+60,000,000
PAYMENTS TO STATES FOR FOSTER CARE AND ADOPTION ASSISTANCE						
Foster care	2,610,050,000	2,605,500,000	2,605,500,000	2,605,500,000	2,605,500,000	-4,550,000
Adoption assistance	243,964,000	317,400,000	317,400,000	317,400,000	317,400,000	+73,436,000
Independent living	70,000,000	70,000,000	70,000,000	70,000,000	70,000,000	---
Total, Payments to States	2,924,014,000	2,992,900,000	2,992,900,000	2,992,900,000	2,992,900,000	+68,886,000
Total, Administration for Children and Families	30,575,979,000	31,388,757,000	24,719,026,000	31,638,430,000	31,537,851,000	+961,872,000
Current year	(24,326,571,000)	(25,783,977,000)	(24,719,026,000)	(25,931,022,000)	(25,862,851,000)	(+1,536,280,000)
FY 1995	(6,249,408,000)	(5,604,780,000)	---	(5,707,408,000)	(5,675,000,000)	(-574,408,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
ADMINISTRATION ON AGING						
AGING SERVICES PROGRAMS						
Grants to States:						
Supportive services and centers....................	296,844,000	296,844,000	296,844,000	310,000,000	306,711,000	+9,867,000
Ombudsman services..................................	3,870,000	3,870,000	4,370,000	4,370,000	4,370,000	+500,000
Prevention of elder abuse..........................	4,348,000	4,348,000	4,648,000	4,648,000	4,648,000	+300,000
Pension counseling..................................	---	---	2,000,000	2,000,000	2,000,000	+2,000,000
Preventive health....................................	16,864,000	16,864,000	16,864,000	17,200,000	17,032,000	+168,000
Nutrition:						
Congregate meals..................................	363,235,000	363,235,000	363,235,000	380,000,000	375,809,000	+12,574,000
Home-delivered meals............................	89,659,000	89,659,000	89,659,000	95,000,000	93,665,000	+4,006,000
Frail elderly in-home services........................	7,075,000	7,075,000	7,075,000	7,075,000	7,075,000	---
Grants to Indians......................................	15,110,000	15,110,000	15,110,000	17,500,000	16,902,000	+1,792,000
Aging research, training and special projects.........	25,693,000	25,830,000	25,830,000	25,830,000	25,830,000	+137,000
Federal Council on Aging..............................	178,000	177,000	177,000	177,000	177,000	-1,000
White House Conference on Aging.......................	---	---	---	2,000,000	1,000,000	+1,000,000
Program administration................................	15,800,000	16,063,000	16,063,000	16,063,000	16,063,000	+263,000
Total, Administration on Aging..................	838,676,000	839,075,000	841,875,000	861,863,000	871,282,000	+32,606,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
OFFICE OF THE SECRETARY						
GENERAL DEPARTMENTAL MANAGEMENT:						
Federal funds	90,384,000	94,149,000	94,149,000	92,793,000	94,431,000	+4,047,000
Trust funds	(22,038,000)	(22,975,000)	(22,975,000)	(22,975,000)	(22,975,000)	(+937,000)
Portion treated as budget authority	(7,947,000)	(8,286,000)	(8,286,000)	(8,286,000)	(8,286,000)	(+339,000)
Total, General Departmental Management:						
Federal funds	90,384,000	94,149,000	94,149,000	92,793,000	94,431,000	+4,047,000
Trust funds	(29,985,000)	(31,261,000)	(31,261,000)	(31,261,000)	(31,261,000)	(+1,276,000)
Total	(120,369,000)	(125,410,000)	(125,410,000)	(124,054,000)	(125,692,000)	(+5,323,000)
OFFICE OF THE INSPECTOR GENERAL:						
Federal funds	62,379,000	62,379,000	62,379,000	64,800,000	63,590,000	+1,211,000
Trust funds	(16,020,000)	(16,020,000)	(16,020,000)	(16,020,000)	(16,020,000)	---
Portion treated as budget authority	(20,597,000)	(20,597,000)	(20,597,000)	(20,597,000)	(20,597,000)	---
Total, Office of the Inspector General:						
Federal funds	62,379,000	62,379,000	62,379,000	64,800,000	63,590,000	+1,211,000
Trust funds	(36,617,000)	(36,617,000)	(36,617,000)	(36,617,000)	(36,617,000)	---
Total	(98,996,000)	(98,996,000)	(98,996,000)	(101,417,000)	(100,207,000)	(+1,211,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
OFFICE FOR CIVIL RIGHTS:						
Federal funds	18,308,000	18,308,000	18,308,000	18,308,000	18,308,000	---
Trust funds	(97,000)	(97,000)	(97,000)	(97,000)	(97,000)	---
Portion treated as budget authority	(3,777,000)	(3,777,000)	(3,777,000)	(3,777,000)	(3,777,000)	---
Total, Office for Civil Rights:						
Federal funds	18,308,000	18,308,000	18,308,000	18,308,000	18,308,000	---
Trust funds	(3,874,000)	(3,874,000)	(3,874,000)	(3,874,000)	(3,874,000)	---
Total	(22,182,000)	(22,182,000)	(22,182,000)	(22,182,000)	(22,182,000)	---
POLICY RESEARCH	8,047,000	15,868,000	12,000,000	12,000,000	12,000,000	+3,953,000
Total, Office of the Secretary:						
Federal funds	179,118,000	190,704,000	186,836,000	187,901,000	188,329,000	+9,211,000
Trust funds	(70,476,000)	(71,752,000)	(71,752,000)	(71,752,000)	(71,752,000)	(+1,276,000)
Total	(249,594,000)	(262,456,000)	(258,588,000)	(259,653,000)	(260,081,000)	(+10,487,000)
Total, Department of Health and Human Services:						
Federal Funds	210,931,782,000	215,624,206,000	175,032,320,000	215,968,067,000	215,802,937,000	+4,871,155,000
Current year FY 1994	(172,736,374,000)	(176,459,426,000)	(175,032,320,000)	(176,700,659,000)	(176,567,937,000)	(+3,831,563,000)
FY 1995	(38,195,408,000)	(39,164,780,000)	---	(39,267,408,000)	(39,235,000,000)	(+1,039,592,000)
Trust funds	(7,049,992,000)	(8,374,324,000)	(7,774,421,000)	(7,666,037,000)	(7,763,583,000)	(+713,591,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
TITLE III - DEPARTMENT OF EDUCATION						
EDUCATION REFORM						
Goals 2000: Educate America Act (proposed legislation)	---	420,000,000	100,000,000	116,000,000	105,000,000	+105,000,000
Technology (non-add)...............................	---	---	---	(5,000,000)	(5,000,000)	(+5,000,000)
School-to-work initiative...............................	---	135,000,000	33,750,000	50,000,000	50,000,000	+50,000,000
Urban-rural initiative................................	---	15,000,000	---	---	---	---
Teacher professional development......................	---	15,000,000	---	---	---	---
Total..	---	585,000,000	133,750,000	166,000,000	155,000,000	+155,000,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
COMPENSATORY EDUCATION FOR THE DISADVANTAGED						
Grants for the disadvantaged (Chapter 1):						
Grants to local educational agencies:						
Basic grants	5,449,925,000	5,800,000,000	5,597,000,000	5,687,000,000	5,642,000,000	+192,075,000
Concentration grants	675,998,000	700,000,000	694,000,000	694,000,000	694,000,000	+18,002,000
Subtotal, grants to LEA's	6,125,923,000	6,500,000,000	6,291,000,000	6,381,000,000	6,336,000,000	+210,077,000
Capital expenses for private school children	39,734,000	39,734,000	39,734,000	42,000,000	41,434,000	+1,700,000
Even start	89,123,000	110,000,000	89,123,000	92,123,000	91,373,000	+2,250,000
State agency programs:						
Migrant	302,773,000	310,948,000	302,773,000	306,000,000	305,193,000	+2,420,000
Neglected and delinquent	35,407,000	36,363,000	35,407,000	35,407,000	35,407,000	---
State administration	60,712,000	60,712,000	60,712,000	60,712,000	60,712,000	---
State program improvement grants	25,933,000	25,933,000	25,933,000	25,933,000	25,933,000	---
Evaluation and technical assistance 1/	14,036,000	13,100,000	13,100,000	13,100,000	13,100,000	-936,000
Rural technical assistance centers 1/	4,960,000	2,980,000	2,980,000	4,960,000	4,960,000	---
Total, Chapter 1	6,698,601,000	7,099,770,000	6,860,762,000	6,961,235,000	6,914,112,000	+215,511,000
Migrant education:						
High school equivalency program 1/	8,161,000	8,161,000	8,161,000	8,161,000	8,161,000	---
College assistance migrant program 1/	2,224,000	2,224,000	2,224,000	2,224,000	2,224,000	---
Subtotal, migrant education	10,385,000	10,385,000	10,385,000	10,385,000	10,385,000	---
Total, Compensatory education programs	6,708,986,000	7,110,155,000 *	6,871,147,000	6,971,620,000	6,924,497,000	+215,511,000
Subtotal, forward funded	(6,679,605,000)	(7,063,690,000)	(6,844,682,000)	(6,943,175,000)	(6,896,052,000)	(+216,447,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
IMPACT AID						
Maintenance and operations:						
Payments for ''a'' children:						
Regular payments	$567,080,000	600,000,000	630,800,000	563,780,000	613,445,000	+46,365,000
3(d)(2)(B) districts	17,677,000	16,000,000	17,877,000	20,857,000	20,062,000	+2,385,000
Subtotal	584,757,000	616,000,000	647,677,000	584,637,000	633,507,000	+48,750,000
Payments for ''b'' children:						
Regular payments	123,629,000	61,800,000	123,629,000	121,629,000	123,129,000	-500,000
3(d)(2)(B) districts	11,785,000	---	11,785,000	13,905,000	13,375,000	+1,590,000
Subtotal	135,414,000	61,800,000	135,414,000	135,534,000	136,504,000	+1,090,000
Payments for Federal property (Section 2)	16,293,000	8,000,000	16,293,000	16,293,000	16,293,000	---
Payments related to decreased activity (Sec. 3e)	1,786,000	---	1,786,000	---	---	-1,786,000
Subtotal	738,250,000	685,800,000	801,170,000	736,464,000	786,304,000	+48,054,000
Construction	11,904,000	3,000,000	11,904,000	11,904,000	11,904,000	---
Flood relief supplemental	70,000,000	---	---	---	---	-70,000,000
Total, Impact aid	820,154,000	688,800,000	813,074,000	748,368,000	798,208,000	-21,946,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
SCHOOL IMPROVEMENT PROGRAMS 1/						
Educational improvement (Chapter 2):						
State and local programs:						
State block grants 2/	435,488,000	415,488,000	369,500,000	369,500,000	369,500,000	-65,988,000
National programs:						
Inexpensive book distribution (RIF)	10,029,000	10,029,000	10,029,000	10,300,000	10,300,000	+271,000
Arts in education	6,944,000	6,944,000	8,944,000	8,944,000	8,944,000	+2,000,000
Law - related education	5,952,000	3,000,000	5,952,000	5,952,000	5,952,000	---
Subtotal, National programs	22,925,000	19,973,000	24,925,000	25,196,000	25,196,000	+2,271,000
Total, Chapter 2	458,413,000	435,461,000	394,425,000	394,696,000	394,696,000	-63,717,000
Drug-free and Safe schools:						
State grants 2/	498,565,000	498,565,000	369,500,000	369,500,000	369,500,000	-129,065,000
School personnel training	13,614,000	13,614,000	13,614,000	13,614,000	13,614,000	---
National programs	61,496,000	61,496,000	59,496,000	59,496,000	59,496,000	-2,000,000
Emergency grants	24,552,000	24,552,000	24,552,000	24,552,000	24,552,000	---
Safe schools initiative (proposed leg.) 1/ 2/	---	75,000,000	---	32,838,000	20,000,000	+20,000,000
Subtotal, Drug-free schools	598,227,000	673,227,000	467,162,000	500,000,000	487,162,000	-111,065,000

1/ House bill considered Safe Schools request under Education Reform account.

2/ Forward funded.

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
Strengthening teaching and administration:						
Eisenhower mathematics and science education State grants 1/	246,016,000	252,658,000	246,016,000	252,658,000	250,998,000	+4,982,000
Christa McAuliffe fellowships	1,964,000	2,104,000	1,964,000	1,964,000	1,964,000	---
Other school improvement programs:						
Magnet schools assistance	107,985,000	107,985,000	107,985,000	107,985,000	107,985,000	---
Education for homeless children & youth 1/	24,800,000	25,470,000	25,470,000	25,470,000	25,470,000	+670,000
Women's educational equity	1,984,000	1,984,000	1,984,000	1,984,000	1,984,000	---
Training and advisory services (Civil Rights IV-A)	21,606,000	21,606,000	21,606,000	21,606,000	21,606,000	---
Dropout prevention demonstrations	37,530,000	37,730,000	42,230,000	37,730,000	37,730,000	+200,000
General assistance to the Virgin Islands	2,455,000	1,227,000	1,227,000	1,227,000	1,227,000	-1,228,000
Ellender fellowships/Close up 1/	4,223,000	---	4,223,000	4,223,000	4,223,000	---
Follow through	8,478,000	8,478,000	8,478,000	8,478,000	8,478,000	---
Education for native Hawaiians	6,448,000	---	6,448,000	10,000,000	8,224,000	+1,776,000
Foreign languages assistance 1/	10,912,000	---	---	10,912,000	10,912,000	---
Training in early childhood education and violence counseling (HEA V-F)	4,960,000	4,960,000	9,960,000	14,960,000	14,000,000	+9,040,000
Subtotal, other school improvement programs	231,381,000	209,440,000	229,611,000	244,575,000	241,839,000	+10,458,000
Total, School improvement programs	1,536,001,000	1,572,890,000	1,339,178,000	1,393,893,000	1,376,659,000	-159,342,000
Subtotal, forward funded	(1,220,004,000)	(1,267,181,000)	(1,014,709,000)	(1,068,101,000)	(1,050,603,000)	(-169,401,000)

1/ Forward funded.

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
BILINGUAL AND IMMIGRANT EDUCATION						
Bilingual education:						
Bilingual programs	149,696,000	153,738,000	153,738,000	149,696,000	152,728,000	+3,032,000
Support services	10,879,000	12,379,000	12,379,000	10,879,000	12,004,000	+1,125,000
Training grants	35,708,000	36,672,000	36,672,000	35,708,000	36,431,000	+723,000
Immigrant education	29,462,000	29,462,000	40,000,000	35,968,000	38,992,000	+9,530,000
Total	225,745,000	232,251,000	242,789,000	232,251,000	240,155,000	+14,410,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
SPECIAL EDUCATION						
State grants:						
Grants to States part ''b''	2,052,728,000	2,163,708,000	2,108,218,000	2,163,508,000	2,149,686,000	+96,958,000
Chapter 1 handicapped program	126,394,000	113,755,000	113,755,000	120,000,000	116,878,000	-9,516,000
Preschool grants	325,773,000	343,751,000	325,773,000	343,751,000	339,257,000	+13,484,000
Grants for infants and families	213,280,000	256,280,000	243,769,000	256,280,000	253,152,000	+39,872,000
Subtotal, State grants	2,718,175,000	2,877,494,000	2,791,515,000	2,883,539,000	2,858,973,000	+140,798,000
Special purpose funds:						
Deaf-blindness	12,832,000	12,832,000	12,832,000	12,832,000	12,832,000	---
Serious emotional disturbance	4,147,000	4,147,000	4,147,000	4,147,000	4,147,000	---
Severe disabilities	9,330,000	9,330,000	9,330,000	9,330,000	9,330,000	---
Early childhood education	25,167,000	25,167,000	25,167,000	25,167,000	25,167,000	---
Secondary and transitional services	21,966,000	21,966,000	21,966,000	21,966,000	21,966,000	---
Postsecondary education	8,839,000	8,839,000	8,839,000	8,839,000	8,839,000	---
Innovation and development	20,635,000	20,635,000	20,635,000	20,635,000	20,635,000	---
Media and captioning services	17,892,000	17,892,000	18,392,000	18,892,000	18,642,000	+750,000
Technology applications	10,862,000	10,862,000	10,862,000	10,862,000	10,862,000	---
Special studies	3,855,000	3,855,000	3,855,000	3,855,000	3,855,000	---
Personnel development	90,122,000	90,122,000	90,122,000	92,555,000	91,339,000	+1,217,000
Parent training	12,400,000	12,400,000	12,400,000	12,735,000	12,735,000	+335,000
Clearinghouses	2,162,000	2,162,000	2,162,000	2,162,000	2,162,000	---
Regional resource centers	7,218,000	7,218,000	7,218,000	7,218,000	7,218,000	---
Subtotal, Special purpose funds	247,427,000	247,427,000	247,927,000	251,195,000	249,729,000	+2,302,000
Total, Special education	2,965,602,000	3,124,921,000	3,039,442,000	3,134,734,000	3,108,702,000	+143,100,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
REHABILITATION SERVICES AND DISABILITY RESEARCH						
Vocational rehabilitation State grants:						
Grants to States	1,879,679,000	1,939,828,000	1,939,828,000	1,989,828,000	1,974,145,000	+94,466,000
Supported employment State grants	32,273,000	33,144,000	33,144,000	35,000,000	34,536,000	+2,263,000
Client assistance	9,296,000	9,547,000	9,547,000	9,547,000	9,547,000	+251,000
Subtotal, State grants	1,921,248,000	1,982,519,000	1,982,519,000	2,034,375,000	2,018,228,000	+96,980,000
Special purpose funds:						
Special demonstration programs	19,942,000	19,942,000	19,942,000	19,942,000	19,942,000	---
Supported employment projects	10,616,000	10,616,000	10,616,000	10,616,000	10,616,000	---
Recreational programs	2,596,000	2,596,000	2,596,000	2,596,000	2,596,000	---
Migratory workers	1,171,000	1,171,000	1,171,000	1,171,000	1,171,000	---
Projects with industry	21,571,000	21,571,000	21,571,000	22,571,000	22,071,000	+500,000
Helen Keller National Center	6,564,000	6,741,000	6,741,000	6,741,000	6,741,000	+177,000
Independent living:						
State grants	15,376,000	15,791,000	15,791,000	18,553,000	18,003,000	+2,627,000
Centers	31,446,000	34,446,000	34,446,000	37,943,000	36,818,000	+5,372,000
Services for older blind	6,944,000	6,944,000	6,944,000	8,379,000	8,131,000	+1,187,000
Subtotal, Independent living	53,766,000	57,181,000	57,181,000	64,875,000	62,952,000	+9,186,000
Protection and advocacy	2,480,000	2,480,000	2,480,000	8,000,000	5,500,000	+3,020,000
Training	39,629,000	39,629,000	39,629,000	39,629,000	39,629,000	---
National Institute on Disability & Rehabilitation Research	67,238,000	67,238,000	67,238,000	69,053,000	68,146,000	+908,000
Technology assistance	34,068,000	37,744,000	37,744,000	37,744,000	37,744,000	+3,676,000
Evaluation	1,810,000	1,600,000	1,600,000	1,800,000	1,600,000	-210,000
Subtotal, Special purpose funds	261,451,000	268,509,000	268,509,000	282,538,000	278,708,000	+17,257,000
Total, Rehabilitation services	2,182,699,000	2,251,028,000	2,251,028,000	2,316,913,000	2,296,936,000	+114,237,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
SPECIAL INSTITUTIONS FOR PERSONS WITH DISABILITIES						
AMERICAN PRINTING HOUSE FOR THE BLIND	6,298,000	6,463,000	6,463,000	6,463,000	6,463,000	+165,000
NATIONAL TECHNICAL INSTITUTE FOR THE DEAF:						
Operations	40,026,000	41,307,000	41,307,000	41,307,000	41,307,000	+1,281,000
Endowment grant	336,000	336,000	336,000	336,000	336,000	---
Construction	351,000	193,000	193,000	193,000	193,000	-158,000
Subtotal	40,713,000	41,836,000	41,836,000	41,836,000	41,836,000	+1,123,000
GALLAUDET UNIVERSITY:						
University programs	51,056,000	52,715,000	52,715,000	52,715,000	52,715,000	+1,659,000
Precollege programs	23,096,000	23,720,000	23,720,000	23,720,000	23,720,000	+624,000
Endowment grant	982,000	1,000,000	1,000,000	1,000,000	1,000,000	+18,000
Construction	2,455,000	---	---	2,000,000	1,000,000	-1,455,000
Subtotal	77,589,000	77,435,000	77,435,000	79,435,000	78,435,000	+846,000
Total, Special institutions for persons with disabilities	124,600,000	125,734,000	125,734,000	127,734,000	126,734,000	+2,134,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
VOCATIONAL AND ADULT EDUCATION						
Vocational education:						
Basic State grants	972,750,000	972,750,000	972,750,000	972,750,000	972,750,000	---
Community - based organizations	11,785,000	11,785,000	11,785,000	11,785,000	11,785,000	---
Consumer and homemaking education	34,720,000	---	34,720,000	34,720,000	34,720,000	---
Tech-Prep education	104,123,000	104,123,000	104,123,000	104,123,000	104,123,000	---
Tribally controlled postsecondary vocational institutions 1/	2,946,000	2,946,000	2,946,000	2,946,000	2,946,000	---
State councils	8,928,000	8,928,000	8,928,000	8,928,000	8,928,000	---
National programs: Research	9,662,000	9,662,000	9,662,000	9,662,000	9,662,000	---
Demonstrations	16,705,000	16,705,000	16,705,000	25,705,000	23,455,000	+6,750,000
Data systems (NOICC/SOICC)	4,960,000	4,960,000	4,960,000	4,960,000	4,960,000	---
Subtotal, national programs	31,327,000	31,327,000	31,327,000	40,327,000	38,077,000	+6,750,000
Bilingual vocational training	2,946,000	---	2,946,000	2,946,000	2,946,000	---
Subtotal, Vocational education	1,169,525,000	1,131,859,000	1,169,525,000	1,178,525,000	1,176,275,000	+6,750,000
Adult education:						
State Programs	254,624,000	261,500,000	254,624,000	254,624,000	254,624,000	---
National programs	8,837,000	9,250,000	8,837,000	8,837,000	8,837,000	---
Literacy training for homeless adults	9,584,000	10,000,000	9,584,000	9,584,000	9,584,000	---
Workplace literacy partnerships	18,906,000	22,000,000	18,906,000	18,906,000	18,906,000	---
State literacy resource centers	7,857,000	7,857,000	7,857,000	7,857,000	7,857,000	---
Literacy programs for prisoners	4,910,000	5,100,000	4,910,000	5,100,000	5,100,000	+190,000
Subtotal, adult education	304,718,000	315,707,000	304,718,000	304,908,000	304,908,000	+190,000
Total, Vocational and adult education	1,474,243,000	1,447,566,000	1,474,243,000	1,483,433,000	1,481,183,000	+6,940,000

1/ Current funded

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
STUDENT FINANCIAL ASSISTANCE						
Federal Pell Grants: Regular program	5,757,568,000	6,303,566,000	6,303,566,000	6,303,566,000	6,303,566,000	+545,998,000
Flood relief supplemental	30,000,000	---	---	---	---	-30,000,000
Federal Pell Grants: Funding for shortfall	671,237,000	2,023,730,000	415,000,000	185,296,000	250,000,000	-421,237,000
Subtotal, Pell Grants	6,458,805,000	8,327,296,000	6,718,566,000	6,488,862,000	6,553,566,000	+94,761,000
Federal Supplemental educational opportunity grants	583,407,000	499,892,000	555,000,000	583,407,000	583,407,000	---
Federal Work-study	616,508,000	526,941,000	586,000,000	616,508,000	616,508,000	---
Federal Perkins loans: Capital contributions	165,780,000	144,037,000	158,000,000	158,000,000	158,000,000	-7,780,000
Loan cancellations	14,880,000	15,000,000	15,000,000	15,000,000	15,000,000	+120,000
Subtotal, Federal Perkins loans	180,660,000	159,037,000	173,000,000	173,000,000	173,000,000	-7,660,000
State student incentive grants	72,429,000	---	62,000,000	72,429,000	72,429,000	---
State postsecondary review program	5,300,000	25,000,000	25,000,000	10,000,000	21,250,000	+15,950,000
Student financial assistance administration	---	---	---	60,087,000	---	---
Total, Student financial assistance	7,917,109,000	9,538,166,000	8,120,366,000	8,004,293,000	8,020,160,000	+103,051,000
FEDERAL FAMILY EDUCATION LOANS PROGRAM						
(EXISTING GUARANTEED STUDENT LOANS PROGRAM)						
Federal education loans: New loan subsidies (indefinite)	2,182,721,000	2,086,350,000*	2,086,350,000	2,086,350,000	2,086,350,000	-96,371,000
Mandatory admin expenses (indefinite)	41,828,000	92,340,000	92,340,000	92,340,000	92,340,000	+50,512,000
Federal administration	60,487,000	72,466,000	72,466,000	72,466,000	72,466,000	+11,979,000
Total	2,285,036,000	2,251,156,000	2,251,156,000	2,251,156,000	2,251,156,000	-33,880,000
FEDERAL DIRECT LOAN DEMONSTRATION PROGRAM (HEA IV-D)						
Direct loan subsidies: New loans (sec. 451)	---	22,179,000	22,179,000	22,179,000	22,179,000	+22,179,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
HIGHER EDUCATION						
Aid for institutional development:						
Strengthening institutions.........................	86,257,000	88,586,000	88,586,000	88,586,000	88,586,000	+2,329,000
Strengthening historically black colleges & univ..	98,208,000	100,860,000	100,860,000	100,860,000	100,860,000	+2,652,000
Strengthening historically black grad institutions	11,501,000	11,812,000	17,312,000	11,501,000	15,859,000	+4,358,000
Endowment challenge grants:						
Endowment grants.............................	5,525,000	5,674,000	5,674,000	5,674,000	5,674,000	+149,000
HBCU set-aside................................	1,841,000	1,891,000	1,891,000	1,891,000	1,891,000	+50,000
Subtotal, Institutional development.........	203,332,000	208,823,000	214,323,000	208,512,000	212,870,000	+9,538,000
Program development:						
Fund for the Improvement of Postsecondary Educ....	15,872,000	17,872,000	15,872,000	17,872,000	17,372,000	+1,500,000
Dwight D. Eisenhower leadership program...........	3,472,000	---	---	4,000,000	4,000,000	+528,000
Minority teacher recruitment......................	2,480,000	2,547,000	2,480,000	2,480,000	2,480,000	---
Minority science improvement......................	5,892,000	5,892,000	5,892,000	5,892,000	5,892,000	---
Innovative projects for community service.........	1,436,000	2,872,000	1,436,000	1,436,000	1,436,000	---
Student Literacy and Mentoring Corps..............	5,270,000	1,000,000	1,000,000	---	---	-5,270,000
International educ & foreign language studies:						
Domestic programs............................	49,283,000	48,301,000	51,283,000	51,283,000	52,283,000	+3,000,000
Overseas programs............................	5,843,000	5,843,000	5,843,000	5,843,000	5,843,000	---
Institute for International Public Policy.....	---	4,000,000	1,000,000	---	1,000,000	+1,000,000
Subtotal, International education...........	55,126,000	58,144,000	58,126,000	57,126,000	59,126,000	+4,000,000
Cooperative education.............................	13,749,000	---	13,749,000	13,749,000	13,749,000	---
Law school clinical experience....................	9,920,000	9,920,000	14,920,000	14,920,000	14,920,000	+5,000,000
Urban community service...........................	9,424,000	9,424,000	9,424,000	11,000,000	10,606,000	+1,182,000
Subtotal, Program development...................	122,641,000	107,671,000	122,899,000	128,475,000	129,581,000	+6,940,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
Construction:						
Interest subsidy grants, prior year construction..	18,689,000	18,029,000	18,029,000	18,029,000	18,029,000	-660,000
Special grants:						
Assistance to Guam................................	397,000	---	397,000	397,000	397,000	---
Robert A. Taft Institute..........................	319,000	---	---	---	---	-319,000
Mary C. McLeod Bethune Memorial Fine Arts Center..	---	12,500,000	---	---	---	---
Subtotal, Special grants........................	716,000	12,500,000	397,000	397,000	397,000	-319,000
Federal TRIO programs..............................	388,048,000	398,525,000	418,525,000	418,525,000	418,525,000	+30,477,000
Scholarships:						
Byrd honors scholarships..........................	9,470,000	18,940,000	18,940,000	19,294,000	19,294,000	+9,824,000
National science scholars.........................	4,464,000	6,048,000	4,464,000	4,464,000	4,464,000	---
National Academy of Science, Space and Technology.	2,161,000	---	---	---	---	-2,161,000
Douglas teacher scholarships......................	14,731,000	15,379,000	14,731,000	14,731,000	14,731,000	---
Early Intervention Scholarships...................	---	---	2,500,000	---	1,875,000	+1,875,000
Teacher Opportunity Corps.........................	---	---	2,500,000	---	1,875,000	+1,875,000
Subtotal, Scholarships..........................	30,826,000	40,367,000	43,135,000	38,489,000	42,239,000	+11,413,000
Graduate fellowships:						
Women & minority participation in grad education..	5,846,000	6,004,000	5,846,000	5,846,000	5,846,000	---
Harris graduate fellowships.......................	20,427,000	21,796,000	20,427,000	20,427,000	20,427,000	---
Javits fellowships................................	7,857,000	8,664,000	7,857,000	7,857,000	7,857,000	---
Graduate assistance in areas of national need.....	27,498,000	35,623,000	27,498,000	27,498,000	27,498,000	---
Faculty development fellowships...................	---	8,500,000	4,000,000	2,000,000	3,500,000	+3,500,000
Subtotal, Graduate fellowships..................	61,628,000	80,587,000	65,628,000	63,628,000	65,128,000	+3,500,000
School, college & university partnerships............	3,928,000	3,928,000	3,928,000	3,928,000	3,928,000	---
Legal training for the disadvantaged (CLEO)...........	2,991,000	2,991,000	2,991,000	2,991,000	2,991,000	---
Total, Higher education.........................	832,799,000	873,421,000	889,855,000	882,974,000	893,688,000	+60,889,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
HOWARD UNIVERSITY						
Academic program	150,764,000	154,835,000	154,835,000	154,835,000	154,835,000	+4,071,000
Endowment program	3,351,000	3,441,000	3,441,000	3,441,000	3,441,000	+90,000
Research	4,533,000	4,655,000	4,655,000	4,655,000	4,655,000	+122,000
Howard University Hospital	28,973,000	29,755,000	29,755,000	29,755,000	29,755,000	+782,000
Construction: Regular grants	5,300,000	---	---	---	---	-5,300,000
Matching program	1,084,000	---	---	---	---	-1,084,000
Total, Howard University	194,005,000	192,686,000	192,686,000	192,686,000	192,686,000	-1,319,000
COLLEGE HOUSING AND ACADEMIC FACILITIES LOANS PROGRAM: Loan subsidies	2,973,000	---	---	---	---	-2,973,000
Federal administration	727,000	730,000	730,000	730,000	730,000	+3,000
Loan limitation (non-add)	(29,465,000)	---	---	---	---	(-29,465,000)
Total, College Housing Program	3,700,000	730,000	730,000	730,000	730,000	-2,970,000
HISTORICALLY BLACK COLLEGE & UNIVERSITY CAPITAL FINANCING PROGRAM						
Federal insurance limitation (non-add)	---	(375,000,000)	(187,500,000)	(375,000,000)	(375,000,000)	(+375,000,000)
Letter of credit limitation (non-add)	---	(357,000,000)	(178,500,000)	(357,000,000)	(357,000,000)	(+357,000,000)
Federal administration	---	200,000	200,000	200,000	200,000	+200,000
Total	---	200,000	200,000	200,000	200,000	+200,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
EDUCATION RESEARCH, STATISTICS, AND IMPROVEMENT						
Research and statistics:						
Research	73,984,000	90,750,000	73,984,000	78,000,000	78,000,000	+4,016,000
Statistics	48,588,000	60,000,000	48,588,000	48,588,000	48,588,000	---
Assessment, regular program	29,262,000	65,000,000	29,262,000	29,262,000	29,262,000	---
Subtotal, Research and statistics	151,834,000	215,750,000	151,834,000	155,850,000	155,850,000	+4,016,000
Fund for Innovation in Education	28,008,000	40,000,000	28,008,000	40,000,000	32,500,000	+4,492,000
Civics Education	---	---	---	4,463,000	4,463,000	+4,463,000
Fund for the Improvement and Reform of Schools and Teaching:						
Grants for schools and teachers	5,396,000	5,396,000	5,396,000	5,396,000	5,396,000	---
Family-school partnerships	3,687,000	3,687,000	3,687,000	3,687,000	3,687,000	---
Eisenhower mathematics & science educ national program	15,872,000	15,872,000	15,872,000	16,072,000	16,072,000	+200,000
Eisenhower math-science regional consortia	13,590,000	12,741,000	12,741,000	15,000,000	13,871,000	+281,000
National Diffusion Network	14,582,000	14,582,000	14,582,000	14,582,000	14,582,000	---
Blue ribbon schools	879,000	903,000	879,000	---	879,000	---
Javits gifted and talented students education	9,607,000	9,607,000	9,607,000	9,607,000	9,607,000	---
Star schools	22,777,000	27,000,000	22,777,000	27,000,000	25,944,000	+3,167,000
Educational partnerships	4,136,000	2,120,000	2,120,000	---	---	-4,136,000
Territorial teacher training	1,737,000	---	1,737,000	1,737,000	1,737,000	---
National writing project	3,212,000	---	3,212,000	3,212,000	3,212,000	---
National Board for Professional Teaching Standards	4,792,000	4,921,000	4,792,000	4,792,000	4,792,000	---
Total, ERSI	280,109,000	352,579,000	277,244,000	301,398,000	292,592,000	+12,483,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
LIBRARIES						
Public libraries:						
Services	83,227,000	95,000,000	83,227,000	83,227,000	83,227,000	---
Construction	16,584,000	---	16,584,000	19,000,000	17,792,000	+1,208,000
Interlibrary cooperation	19,749,000	19,749,000	19,749,000	19,749,000	19,749,000	---
Foreign language materials (Title V-LSCA)	968,000	---	---	---	---	-968,000
Library literacy programs	8,098,000	---	8,098,000	8,098,000	8,098,000	---
College library technology	3,873,000	---	3,873,000	3,873,000	3,873,000	---
Library education and training	4,960,000	---	4,960,000	4,980,000	4,960,000	---
Research and demonstrations	2,802,000	---	2,802,000	2,802,000	2,802,000	---
Research libraries	5,808,000	---	5,808,000	5,808,000	5,808,000	---
Total, Libraries	146,069,000	114,749,000	145,101,000	147,517,000	146,309,000	+240,000
DEPARTMENTAL MANAGEMENT						
PROGRAM ADMINISTRATION	304,899,000	352,008,000	352,008,000	291,921,000	352,008,000	+47,109,000
OFFICE FOR CIVIL RIGHTS, SALARIES AND EXPENSES	56,402,000	56,570,000	56,570,000	56,570,000	56,570,000	+168,000
OFFICE OF THE INSPECTOR GENERAL, SALARIES AND EXPENSES	29,262,000	28,840,000	28,840,000	28,840,000	28,840,000	-422,000
Total, Departmental management	390,563,000	437,418,000	437,418,000	377,331,000	437,418,000	+46,855,000
Total, Department of Education	28,087,420,000	30,921,829,000	28,627,320,000	28,755,410,000	28,765,192,000	+677,772,000

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	FY93 Comparable
TITLE IV - RELATED AGENCIES						
Action (Domestic Programs):						
Volunteers in Service to America:						
VISTA operations	34,667,000	36,236,000	34,667,000	36,387,000	35,942,000	+1,275,000
VISTA Literacy Corps	5,009,000	5,303,000	5,009,000	5,009,000	5,009,000	---
University year for VISTA	958,000	1,000,000	958,000	958,000	958,000	---
Subtotal	40,634,000	42,539,000	40,634,000	42,334,000	41,909,000	+1,275,000
Special Volunteer Programs:						
Drug programs	982,000	1,000,000	982,000	982,000	982,000	---
Older Americans Volunteer Programs:						
Foster Grandparents Program	64,804,000	66,301,000	64,804,000	66,554,000	66,117,000	+1,313,000
Senior Companion Program	29,548,000	29,848,000	29,548,000	29,848,000	29,773,000	+225,000
Retired Senior Volunteer Program	33,686,000	34,831,000	33,686,000	34,606,000	34,436,000	+750,000
Subtotal, Older Volunteers	128,038,000	130,980,000	128,038,000	131,008,000	130,326,000	+2,288,000
Inspector General	936,000	947,000	936,000	947,000	944,000	+8,000
Program Support	30,936,000	31,272,000	30,936,000	30,936,000	30,936,000	---
Total, Action	201,526,000	206,738,000	201,526,000	206,287,000	205,097,000	+3,571,000
Corporation for Public Broadcasting: FY96 (current request) 1/	292,640,000	292,640,000	292,640,000	320,000,000	312,000,000	+19,360,000

1/ FY 1993 approp. adv. in FY91 is $318,636,000.
FY 1994 approp. adv. in FY92 is $275,000,000.
FY 1995 approp. adv. in FY93 is $292,640,000.

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
Federal Mediation and Conciliation Service	29,953,000	30,241,000	30,241,000	30,241,000	30,241,000	+288,000
Federal Mine Safety and Health Review Commission	5,728,000	5,842,000	5,842,000	5,842,000	5,842,000	+116,000
National Commission on Acquired Immune Deficiency Syndrome	1,736,000	---	---	---	---	-1,736,000
National Commission on Independent Higher Education	992,000	---	---	---	---	-992,000
National Commission on Libraries and Information Science	889,000	904,000	904,000	904,000	904,000	+15,000
White House Conference on Library and Information Services	397,000	---	---	---	---	-397,000
National Commission on Responsibilities for Financing Postsecondary Education	206,000	---	---	---	---	-206,000
National Commission on the Cost of Higher Education	992,000	---	---	---	---	-992,000
National Commission to Prevent Infant Mortality	446,000	480,000	---	---	---	-446,000
National Council on Disability	1,541,000	1,733,000	1,890,000	1,791,000	1,890,000	+149,000
National Labor Relations Board	169,807,000	171,274,000	171,274,000	171,274,000	171,274,000	+1,467,000
National Mediation Board	7,007,000	8,806,000	8,806,000	8,807,000	8,657,000	+850,000
Occupational Safety and Health Review Commission	7,112,000	7,262,000	7,362,000	7,382,000	7,362,000	+250,000
Physician Payment Review Commission (trust funds)	(4,415,000)	(4,171,000)	(4,171,000)	(4,171,000)	(4,171,000)	(-244,000)
Prospective Payment Assessment Commission (trust funds)	(4,383,000)	(4,575,000)	(4,500,000)	(4,500,000)	(4,500,000)	(+117,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
Railroad Retirement Board:						
Dual benefits payments account	294,030,000	277,000,000	277,000,000	277,000,000	277,000,000	-17,030,000
Less income tax receipts on dual benefits	-22,000,000	-20,000,000	-20,000,000	-20,000,000	-20,000,000	+2,000,000
Subtotal, dual benefits	272,030,000	257,000,000	257,000,000	257,000,000	257,000,000	-15,030,000
Federal payment to the Railroad Retirement Account	100,000	300,000	300,000	300,000	300,000	+200,000
Limitation on administration:						
(Retirement)	(74,544,000)	(73,791,000)	(73,791,000)	(73,791,000)	(73,791,000)	(-753,000)
(Unemployment)	(17,185,000)	(17,010,000)	(17,010,000)	(17,010,000)	(17,010,000)	(-175,000)
Subtotal, administration	(91,729,000)	(90,801,000)	(90,801,000)	(90,801,000)	(90,801,000)	(-928,000)
(Special Management Improvement Fund)	(3,690,000)	(3,300,000)	(3,300,000)	(3,300,000)	(3,300,000)	(-390,000)
Total, limitation on administration	(95,419,000)	(94,101,000)	(94,101,000)	(94,101,000)	(94,101,000)	(-1,318,000)
(Inspector General)	(6,845,000)	(6,742,000)	(6,742,000)	(6,742,000)	(6,742,000)	(-103,000)
Soldiers' and Airmen's Home (trust fund limitation):						
Operation and maintenance	42,117,000	43,448,000	43,139,000	43,139,000	43,139,000	+1,022,000
Capital outlay	5,952,000	4,930,000	4,930,000	4,930,000	4,930,000	-1,022,000
Total	48,069,000	48,378,000	48,069,000	48,069,000	48,069,000	---
United States Institute of Peace	10,912,000	10,912,000	10,912,000	10,912,000	10,912,000	---
United States Naval Home (trust fund limitation):						
Operation and maintenance	10,775,000	10,841,000	10,775,000	10,775,000	10,775,000	---
Capital program	473,000	486,000	473,000	473,000	473,000	---
Total	11,248,000	11,327,000	11,248,000	11,248,000	11,248,000	---
Total, Title IV, Related Agencies:						
Federal Funds (all years)	1,064,129,000	1,053,017,000	1,047,414,000	1,080,037,000	1,070,596,000	+6,467,000
Current year, FY 1994	(771,489,000)	(760,377,000)	(754,774,000)	(760,037,000)	(758,596,000)	(-12,893,000)
FY 1996	(292,640,000)	(292,640,000)	(292,640,000)	(320,000,000)	(312,000,000)	(+19,360,000)
Trust funds	(111,062,000)	(109,589,000)	(109,514,000)	(109,514,000)	(109,514,000)	(-1,548,000)

	FY 1993 Comparable	FY 1994 Budget Request	House Bill	Senate Bill	Conference	Conference vs FY93 Comparable
SUMMARY						
Title I - Department of Labor:						
Federal Funds	12,270,516,000	12,872,261,000	10,972,157,000	10,859,651,000	10,914,538,000	-1,355,978,000
Trust Funds	(3,462,511,000)	(3,690,914,000)	(3,692,212,000)	(3,662,424,000)	(3,701,352,000)	(+238,841,000)
Title II - Department of Health and Human Services:						
Federal Funds	210,931,782,000	215,624,206,000	175,032,320,000	215,968,067,000	215,802,937,000	+4,871,155,000
Current year	(172,736,374,000)	(176,459,426,000)	(175,032,320,000)	(176,700,659,000)	(176,567,937,000)	(+3,831,563,000)
1995 advance	(38,195,408,000)	(39,164,780,000)	---	(39,267,408,000)	(39,235,000,000)	(+1,039,592,000)
Trust Funds	(7,049,992,000)	(8,374,324,000)	(7,774,421,000)	(7,686,037,000)	(7,763,583,000)	(+713,591,000)
Title III - Department of Education:						
Federal Funds	28,087,420,000	30,921,629,000	28,827,320,000	28,755,410,000	28,765,192,000	+677,772,000
Title IV - Related Agencies:						
Federal Funds	1,064,129,000	1,053,017,000	1,047,414,000	1,080,037,000	1,070,596,000	+6,467,000
Current year	(771,489,000)	(760,377,000)	(754,774,000)	(760,037,000)	(758,596,000)	(-12,893,000)
1996 advance	(292,640,000)	(292,640,000)	(292,640,000)	(320,000,000)	(312,000,000)	(+19,360,000)
Trust Funds	(111,062,000)	(109,589,000)	(109,514,000)	(109,514,000)	(109,514,000)	(-1,548,000)
Weed and Seed (P.L. 102-360) (rescission)	225,000,000	---	---	-225,000,000	-225,000,000	-450,000,000
Bill-wide consultant savings	---	---	---	-10,000,000	---	---
Total, all titles:						
Federal Funds	252,578,847,000	260,471,113,000	215,679,211,000	256,428,165,000	256,328,263,000	+3,749,416,000
Current year	(214,090,799,000)	(221,013,693,000)	(215,386,571,000)	(216,840,757,000)	(216,781,263,000)	(+2,690,464,000)
1995 advance	(38,195,408,000)	(39,164,780,000)	---	(39,267,408,000)	(39,235,000,000)	(+1,039,592,000)
1996 advance	(292,640,000)	(292,640,000)	(292,640,000)	(320,000,000)	(312,000,000)	(+19,360,000)
Trust Funds	(10,623,565,000)	(12,174,827,000)	(11,576,147,000)	(11,457,978,000)	(11,574,449,000)	(+950,884,000)

WILLIAM H. NATCHER,
NEAL SMITH,
DAVID R. OBEY,
LOUIS STOKES,
STENY H. HOYER,
NANCY PELOSI,
NITA M. LOWEY,
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ROSA L. DELAURO,
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BILL YOUNG,
HELEN DELICH BENTLEY,
HENRY BONILLA,
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Managers on the Part of the House.

TOM HARKIN,
ROBERT C. BYRD,
ERNEST F. HOLLINGS,
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DALE BUMPERS,
HARRY REID,
HERB KOHL,
PATTY MURRAY,
ARLEN SPECTER,
MARK O. HATFIELD,
TED STEVENS,
THAD COCHRAN,
SLADE GORTON,
CONNIE MACK,
CHRISTOPHER S. BOND,
Managers on the Part of the Senate.

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GIFT OF LIFE CONGRESSIONAL MEDAL ACT OF 1993

OCTOBER 6, 1993.—Ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

[To accompany H.R. 1012 which on February 18, 1993, was referred jointly to the Committee on Banking, Finance and Urban Affairs and the Committee on Energy and Commerce]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1012) to establish a congressional commemorative medal for organ donors and their families, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Gift of Life Congressional Medal Act of 1993".

SEC. 2. CONGRESSIONAL MEDAL.

The Secretary of the Treasury shall design and strike a bronze medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary, in commemoration of organ donors and their families.

SEC. 3. ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—Any organ donor, or the family of any organ donor, shall be eligible for a bronze medal referred to in section 2.

(b) DOCUMENTATION.—The Secretary of Health and Human Services shall establish an application procedure requiring an individual or family to submit to the Secretary documentation to support the eligibility of the individual or family under subsection (a). The Secretary shall determine, through the documentation provided by the individual or family, and, if necessary, independent investigation, whether the individual or family meets the eligibility requirements under such subsection.

SEC. 4. PRESENTATION.

(a) IN GENERAL.—The Secretary of the Treasury shall deliver to the Secretary of Health and Human Services the medals struck pursuant to section 2 and such Secretary shall arrange for the presentation of the medals to eligible individuals.

79-006

(b) LIMITATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), only 1 medal may be awarded per family under subsection (a).

(2) EXCEPTION.—In the case of a family in which more than 1 member is an organ donor, the Secretary of Health and Human Services may award 1 medal to each such organ donor.

SEC. 5. DUPLICATE MEDALS.

The Secretary of the Treasury may strike and sell duplicates of the bronze medal described in section 2 to any eligible individual (as determined under section 3) under such regulations as the Secretary may prescribe at a price sufficient to cover the cost of duplicates.

SEC. 6. NATIONAL MEDALS.

The medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

SEC. 7. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for carrying out this Act.

(b) EQUAL EMPLOYMENT OPPORTUNITY.—Subsection (a) shall not relieve any person entering into a contract under the authority of this Act from complying with any law relating to equal employment opportunity.

SEC. 8. SOLICITATION OF DONATIONS.

(a) IN GENERAL.—The Secretary of the Treasury is authorized to enter into an agreement with the entity which operates the Organ Procurement and Transplantation Network established under section 372 of the Public Health Service Act (42 U.S.C. 274) and an agreement with the entity which operates the National Bone Marrow Donor Registry under section 379 of such Act (42 U.S.C. 274k). The agreements shall meet the following requirements:

(1) The agreements shall provide for the solicitation of donation of funds by the entities to offset the expenditures relating to the issuance of the medals authorized under section 2.

(2)(A) Except as provided in subparagraph (B), all funds received by the entities under paragraph (1) shall be promptly paid by the entities to the Secretary.

(B) The entities may use not more than 5 percent of funds received under paragraph (1) for administrative costs.

(b) DEPOSIT IN COINAGE PROFIT FUND.—Notwithstanding any other provision of law—

(1) all amounts received by the Secretary under subsection (a)(2)(A) shall be deposited in the coinage profit fund;

(2) the Secretary shall charge such fund with all expenditures relating to the issuance of the medals authorized under section 2; and

(3) not more than 5 percent of the amounts received under subsection (a)(2)(A) may be used for administrative costs.

(c) NO NET COST TO THE FEDERAL GOVERNMENT.—The Secretary of the Treasury shall take all actions necessary to ensure that the issuance of the medals authorized under section 2 shall result in no net cost to the Federal Government.

SEC. 9. ORGAN DEFINED.

For purposes of this Act, the term "organ" means—

(1) the human heart, kidney, liver, lung, and pancreas;

(2) such human organs not specified in paragraph (1) (other than corneas or eyes) as the Secretary may by regulation specify; and

(3) human bone marrow.

PURPOSE AND SUMMARY

The purpose of H.R. 1012, the "Gift of Life Congressional Medal Act of 1933", is to authorize the Secretary of the Treasury to design and strike a bronze medal to commemorate the actions of organ donors and their families. The legislation charges the Secretary of Health and Human Services with responsibility for establishing an application procedure which delineates the eligibility of donors or their families to receive medals.

BACKGROUND AND NEED FOR THE LEGISLATION

The establishment of a "Gift of Life Congressional Medal" is intended to heighten public awareness about the importance of organ donation and encourage greater donations by honoring individuals and families who make organ donation possible. The Committee is concerned that current efforts to encourage organ donation have not been effective in increasing the supply of organs available for transplantation. In fact, since enactment of the National Organ Transplantation Act, total donations of solid organs have remained relatively flat while the number of patients with medical conditions that could benefit from a transplant have increased significantly.

Honoring organ donors and their families through the presentation of a medal authorized by the Congress represents a possible incentive that may contribute to reducing the gap between the need for transplants and the availability of organs. While the Committee does not believe the availability of the medal is a panacea for the shortage of transplantable organs, the action has important symbolic value which will be helpful in supplementing other donor recruitment activities.

The Committee proposals revises the introduced bill to provide that the "Gift of Life Congressional Medal" would also be available to bone marrow donors and has incorporated conforming amendments to facilitate the eligibility of these donors.

HEARINGS

The Committee's Subcommittee on Health and the Environment held one hearing on H.R. 1012, on April 22, 1993. Testimony was received from the author of H.R. 1012, Rep. Pete Stark (D–CA).

COMMITTEE CONSIDERATION

On July 1, 1993, the Subcommittee on Health and the Environment met in open session and ordered reported the bill H.R. 1012, with an amendment, by a voice vote, a quorum being present. On July 27, 1993, the Committee met in open session and ordered the bill reported by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been made by the Committee.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the bill will have negligible budget effect for fiscal year 1994 because the Federal expense of producing the "Gift of Life Congressional Medal" will be defrayed by private donations.

The Committee proposal contains a "no net cost" clause included to require that the cost of providing medals to organ donors and donor families be absorbed by the private sector rather than the Federal Government. It is the Committee's intent that the Secretary of the Treasury not proceed with the striking and minting of the medals until sufficient funds have been received from private donations to ensure that the program will be self-sustaining.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 4, 1993.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1012, the Gift of Life Congressional Medal Act of 1993, as ordered reported by the House Committee on Energy and Commerce on July 27, 1993. We estimate that enactment of the bill would have no significant impact on the federal budget and no effect on the budgets of state and local governments. Because this bill could affect receipts, pay-as-you-go procedures would apply.

H.R. 1012 would direct the Secretary of the Treasury to design and strike a bronze medal to commemorate organ donors and their families. The Secretary of Health and Human Services would establish the eligibility of families to receive such medals and would present the medals to those eligible. The Secretary of the Treasury would strike agreements with the operators of organ donation networks to collect donations to cover the Mint's cost of producing the medals. Section 8 of the bill directs the Secretary of the Treasury to ensure that issuing the medals would result in no net cost to the federal government.

Based on information from the Mint and the Department of Health and Human Services, CBO estimates that producing the medals and overseeing their distribution would cost less than $100,000 a year, after initial design and engraving costs of about $50,000. Some or all of these costs would be covered by donations. Therefore, we estimate that the bill would result in no significant net cost to the federal government.

Donations received by the Treasury would be governmental receipts. Therefore, pay-as-you-go procedures would apply to the bill. We estimate that the change in receipts would be less than $100,000 a year.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mickey Buhl.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

The legislation includes provisions to ensure that the issuance of medals shall result in no net cost to the Federal Government. It is the Committee's expectation that the cost of the program will be defrayed through the sale of medals to organizations involved in donor recruitment and that the solicitation of donations by the Organ Procurement and Transplantation Network and the National Bone Marrow Donor Registry will cover the costs of providing medals to eligible families and individuals without expense to such families or individuals.

AGENCY VIEWS

The Committee has not received correspondence from the Secretary of Health and Human Services or the Secretary of the Treasury expressing the Administration's views on this legislation.

○

103D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
103–277

PROVIDING FOR CONSIDERATION OF H.R. 2739

OCTOBER 6, 1993.—Referred to the House Calendar and ordered to be printed

Mr. MOAKLEY, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 269]

The Committee on Rules, having had under consideration House Resolution 269 by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

The following is the amendment adding a title IV to the amendment in the nature of a substitute made in order as an original bill for the purpose of amendment under the 5-minute rule pursuant to House Resolution 269.

At the end insert the following new title:

TITLE IV—EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

SEC. 401. EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY.

Paragraph (1) of section 9502(d) of the Internal Revenue Code of 1986 (relating to expenditures from Airport and Airway Trust Fund) is amended—

(1) by striking "October 1, 1995" and inserting "October 1, 1996", and

(2) by striking "(as such Acts were in effect on the date of the enactment of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992)" and inserting "or the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, or the Aviation Infrastructure Investment Act of 1993 (as such Acts are in effect on the date of the enactment of the Aviation Infrastructure Investment Act of 1993)".

79–008

103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–278

MAKING APPROPRIATIONS FOR MILITARY CONSTRUCTION FOR THE DEPARTMENT OF DEFENSE FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1994, AND FOR OTHER PURPOSES

OCTOBER 7, 1993.—Ordered to be printed

Mr. HEFNER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2446]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2446) "making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1994, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 2, 5, 8, 18, 19, 41, 43, 44, 45, 46, 47, and 48.

That the House recede from its disagreement to the amendments of the Senate numbered 34, 35, 36, 37, and 39, and agree to the same.

Amendment numbered 10:

That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$562,008,000*; and the Senate agree to the same.

Amendment numbered 14:

That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$247,491,000*; and the Senate agree to the same.

Amendment numbered 15:

That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$102,040,000*; and the Senate agree to the same.

72–924

Amendment numbered 16:

That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$25,029,000*; and the Senate agree to the same.

Amendment numbered 21:

That the House recede from its disagreement to the amendment of the Senate numbered 21, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$1,069,601,000*; and the Senate agree to the same.

Amendment numbered 22:

That the House recede from its disagreement to the amendment of the Senate numbered 22, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$1,298,486,000*; and the Senate agree to the same.

Amendment numbered 31:

That the House recede from its disagreement to the amendment of the Senate numbered 31, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$26,337,000*; and the Senate agree to the same.

Amendment numbered 32:

That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$26,496,000*; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 1, 3, 4, 6, 7, 9, 11, 12, 13, 17, 20, 23, 24, 25, 26, 27, 28, 29, 30, 33, 38, 40, and 42.

W.G. (BILL) HEFNER,
THOMAS M. FOGLIETTA,
CARRIE P. MEEK,
NORMAN D. DICKS,
JULIAN C. DIXON,
VIC FAZIO,
STENY H. HOYER,
RONALD D. COLEMAN,
WILLIAM H. NATCHER,
BARBARA F. VUCANOVICH,
SONNY CALLAHAN,
HELEN DELICH BENTLEY,
DAVID L. HOBSON,
JOSEPH MCDADE,
Managers on the Part of the House.

JIM SASSER,
DANIEL K. INOUYE,
HARRY REID,
HERB KOHL,
ROBERT C. BYRD,

SLADE GORTON,
TED STEVENS,
MITCH MCCONNELL,
MARK O. HATFIELD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2446) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1994, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

ITEMS OF GENERAL INTEREST

Reprogramming of Authorized Projects.—The conferees note that funding for many military construction projects could not be accommodated in this conference agreement because of budget constraints. However, the conferees expect that the Department of Defense Authorization Bill for fiscal year 1994, when enacted, will contain authorizations for projects not included in this conference report. In light of this situation, the conferees direct the Department of Defense to give priority consideration to those authorized but unfunded projects in its fiscal year 1995 budget submission for military construction. In addition, the conferees will consider reprogramming requests for such authorized projects that are executable in fiscal year 1994.

Reprogramming Thresholds.—The conferees believe it appropriate to raise the thresholds for both active and reserve components. As a part of the dual criteria, the current 25 percent threshold will remain for both active and reserve components. However, the conferees agree to increase the dollar amount to $2,000,000 for the active components and $600,000 for the reserve components. The increase for the active components will apply to both military construction and family housing construction programs and will be retroactive for projects funded in prior years.

Family Housing Reprogramming Criteria.—To provide the individual services the flexibility to proceed with construction contracts without disruption or delay, the costs associated with environmental hazard remediation such as asbestos removal, radon abatement, lead-based paint removal or abatement, and any other legislated environmental hazard remediation may be excluded, provided that such remediation requirements could not be reasonably anticipated at the time of budget submission. This exclusion applies to projects authorized in the budget year as well as projects authorized in prior years for which construction contracts have not been completed. This exclusion applies to reprogrammings as well as to the calculations to determine the requirement for advance notification to the Committees regarding maintenance and repair ex-

tures in excess of $15,000 for a military family housing unit, or $25,000 for a General or Flag Officer Quarters. However, the Committees will continue to require an after-the-fact notification where such costs cause the thresholds to be exceeded. The notification shall include work scope, cost break-out and other details pertinent to asbestos and/or lead-based paint removal work and shall be reported on a semi-annual basis.

Family Housing Operation and Maintenance.—The conferees regret the need to reduce the family housing operation and maintenance account. The conference action is driven by budget constraints with regard to outlays. Given the reduced funding available for the family housing program, the services should consider closing units which have deteriorated, especially when they are in localities having adequate and affordable housing in the private community. The conferees expect the Department to adequately provide for maintenance of its housing inventory in future budget submissions.

Recission.—The conferees agree to rescind $277,595,000 from appropriations made in fiscal years 1990, 1991, 1992 and 1993. The rescissions represent the amount for projects at military bases that are no longer needed because of the approved 1993 base realignment and closure recommendation. The rescissions also represent projects that are no longer required because of mission changes and force structure reductions. Below is a summary of the rescissions listed by appropriation account:

Military construction:	
Army	$13,900,000
Navy	122,627,000
Air Force	30,095,000
Defense-wide	15,500,000
Subtotal, military construction	182,122,000
Family housing:	
Navy and Marine Corps	40,371,000
Air Force	55,102,000
Subtotal	95,473,000
Total	277,595,000

Matters Addressed by Only One Committee.—The language and allocations set forth in House Report 103–136 and Senate Report 103–148 should be complied with unless specifically addressed to the contrary in the conference report and statement of the managers. Report language included by the House which is not changed by the report of the Senate or the conference, and Senate report language which is not changed by the conference is approved by the committee of conference. The statement of the managers, while repeating some report language for emphasis, does not intend to negate the language referred to above unless expressly provided herein. In cases in which the House or the Senate have directed the submission of a report from the Department of Defense, such report is to be submitted to both House and Senate Committees on Appropriations.

MILITARY CONSTRUCTION, ARMY

(INCLUDING RESCISSIONS)

Amendment No. 1

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$906,676,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference appropriates $906,676,000 for Military Construction, Army instead of $837,644,000 as proposed by the House and $723,505,000 as proposed by the Senate. The conferees agree to the following additions and deletions to the amounts and line items as proposed by the House:

Alabama—Fort Rucker: Road upgrade	+$1,300,000
Alaska—Fort Richardson: Joint mobility center	+10,000,000
Alaska—Fort Wainwright: Waste oil burning power plant	+740,000
Colorado—Fitzsimons Army Medical Center: Dial center office facility	+4,400,000
Georgia—Fort Gillem: Physical fitness center	+2,600,000
Kansas—Fort Riley:	
Barracks and administration renovation	+9,900,000
Battle simulation facility	+4,742,000
Nevada—Hawthorne AAP: Rehabilitate rail line	+4,700,000
North Carolina—Fort Bragg: Library	+5,500,000
Overseas Classified: Communications maintenance facility	−3,600,000
Unspecified Worldwide Locations: General reduction	+28,750,000
Various locations:	
Rescission, fiscal year 1992	−4,700,000
Rescission, fiscal year 1993	−9,200,000

The conferees agree to fund all other items in conference at the level proposed by the House, as shown below:

Alabama—Anniston Army Depot: Ammunition demilitarization facility, phase IV	$110,900,000
Alabama—Fort Rucker: Personnel services facility	14,400,000
Alaska—Fort Richardson: Road improvements	0
Kentucky—Fort Campbell: Rail spur	0
Maryland—Edgewood Arsenal: Child development center	1,450,000
New Mexico—White Sands Missile Range: Rehab facilities	0
New York—Fort Drum: Range complex	0
North Carolina—Fort Bragg:	
Overhills tract land acquisition	15,000,000
Simmons airfield land acquisition	1,450,000
Oklahoma—Fort Sill:	
Central vehicle wash facility	7,600,000
Environmental training center	3,700,000
Texas—Fort Bliss:	
Tactical equipment shop	12,800,000
Tactical equipment shop	2,800,000
Texas—Fort Hood:	
Battalion command and control building	5,600,000
Deployment storage facility	1,500,000
Texas—Fort Sam Houston: Fire station	1,300,000
Utah—Tooele Army Depot: Treaty compliance facility	1,500,000
Kwajalein:	
Sewage treatment facility	11,200,000
Unaccompanied personnel housing	10,000,000
Unspecified worldwide locations:	
Planning and design	84,441,000

Unspecified minor construction	12,000,000

New York—Fort Drum.—The conferees agree that a reprogramming request will be considered for two projects at Fort Drum as follows:

Range control	$2,950,000
POL storage	1,550,000

Alaska—Fort Richardson: Road Improvement.—The conferees agree that the Road Improvement project at Fort Richardson, Alaska fits within the definition of Minor Construction. Therefore, the conferees direct the Army to address this project during fiscal year 1994.

Kentucky—Fort Campbell: Rail Spur.—There is a clear division in the community over this project. The conferees direct the Army to hold public hearings to ascertain the real cost of this project and to assure public safety and public concerns are addressed. The Army should consult with the Chamber of Commerce, municipal officials, local farm representatives and the Economic Development Council, and other interested citizens prior to moving forward with this project.

Texas—Fort Bliss: Barracks Modernization.—The conferees understand that there is a shortfall in funds in the amount of $1.4 million to complete a fiscal year 1991 barracks modernization project (project number 33758) at Fort Bliss. The Army is directed to utilize funds from available savings to complete this project and submit a reprogramming request, if necessary.

Amendment No. 2

Earmarks $109,441,000 for study, planning, design, architect and engineer services as proposed by the House instead of $88,000,000 as proposed by the Senate.

Amendment No. 3

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which rescinds a total of $13,900,000. The House bill proposed a general reduction rather than rescissions. The conference agreement rescinds funds for projects that are no longer required due to Base Realignment and Closure, Part III.

Military Construction, Navy

(INCLUDING RESCISSIONS)

Amendment No. 4

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$681,373,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $681,373,000 for Military Construction, Navy instead of $575,971,000 as proposed by the House and $580,033,000 as proposed by the Senate. The conferees

agree to the following additions and deletions to the amounts and line items as proposed by the House:

California—Alameda Naval Air Station: Control tower complex	−$4,700,000
California—El Toro Marines Corps Air Station: Maintenance hangar addition	−1,950,000
California—San Diego Naval Training Center: Fire protection system	−700,000
Connecticut—New London Naval Submarine Base: Pier improvements	+4,200,000
Florida—Cecil Field Naval Air Station: Sanitary wastewater system upgrade	−1,500,000
Hawaii—Barbers Point Naval Air Station: Fire fighting training facility	−1,350,000
Maryland—Indian Head NSWC: Hazardous waste treatment facility	+10,000
Maryland—NAS Patuxent River: Sewage treatment plant	+1,000,000
Maryland—Patuxent River NAWC: Hazardous material storage facility	+3,400,000
Mississippi—CBC Gulfport:	
Family service center	+2,000,000
Child development center	+2,400,000
Tennessee—Memphis Naval Air Station: Fuels trainer facility	−600,000
Virginia—Norfolk Naval Aviation Depot: Aircraft rework facility—DBOF	−17,800,000
Virginia—Oceana NAS: Replace fuel tank farm	+1,800,000
Virginia—Quantico Marine Corps Combat Dev Command: Rehab instruction space	+5,000,000
Guam—Fleet and Industrial Supply Center: Gas bottle storage facility—DBOF	−1,240,000
Guam—Military Sealift Command Office: Operations building	+2,170,000
Guam—Naval Magazine: Inert storehouses	−3,750,000
Guam—Naval Oceanography Command Center: Oceanography building alterations	−690,000
Guam—Navy Public Works Center:	
Transportation parts storage facility—DBOF	−1,610,000
Waterfront utilities—DBOF	−11,840,000
Unspecified worldwide locations: General reduction	+135,492,000
Various locations:	
Rescission, fiscal year 1990	−7,662,000
Rescission, fiscal year 1991	−14,406,000
Rescission, fiscal year 1992	−62,899,000
Rescission, fiscal year 1993	−37,660,000

The conferees agree to fund all other items in conference at the level proposed by the House, as shown below:

Arizona—MCAS Yuma: Barracks	0
California—Camp Pendleton:	
Emergency off-base water supply main	$750,000
Flood protection—sewage treatment plant	1,000,000
Relocate water wells	1,800,000
Replace drainage structures	3,000,000
Indiana—Crane NSWCD: Ordnance environmnetal test facility	9,600,000
Maryland—Annapolis, Naval Academy: Visitors center	0
Maryland—Patuxent River NAWC:	
Advance system integration facility, phase II	10,000,000
Jet engine test cell	4,900,000
Mississippi—Pascagoula:	
Academic instruction facility	0
Electrical distribution upgrade	0
Mississippi—CBC Gulfport: Warehouse	0
Pennsylvania—Philadelphia Naval Shipyard:	
Asbestos removal facility	2,300,000
Power plant modernization	11,500,000
Guam—Andersen AFB Naval Air Facility:	
Bachelor enlisted quarters renovation	3,560,000
Bachelor officer quarters modernization	3,750,000

Guam—Fleet and Industrial Supply Center: Integrated storage handling facility—DBOF	21,200,000
Guam—Naval Hospital: Child development center	2,460,000
Guam—Naval Station:	
Child development center addition	2,020,000
Explosive ordance disposal operations facility	12,500,000
Guam—Navy Public Works Center: Sewerage treatment plant—DBOF	7,230,000
Italy—Naples Naval Support Activity: Quality of life facilities, phase I	11,740,000
Italy—Sigonella Naval Air Station: Child development center	3,460,000
Spain—Rota Naval Station: Child development center	2,670,000
Unspecified Worldwide Locations: Planning and design	64,373,000

Amendment No. 5

Earmarks $64,373,000 for study, planning, design, architect and engineer services as proposed by the House instead of $59,373,000 as proposed by the Senate.

Amendment No. 6

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of matter inserted by said amendment, insert: *Provided further, That of the funds appropriated for "Military Construction, Navy" under Public Law 101–148, $7,662,000 is hereby rescinded: Provided further, That of the funds appropriated for "Military Construction, Navy" under Public Law 101–519, $14,406,000 is hereby rescinded: Provided further, That of the funds appropriated for "Military Construction, Navy" under Public Law 102–136, $62,899,000 is hereby rescinded: Provided further, That of the funds appropriated for "Military Construction, Navy" under Public Law 102–380, $37,660,000 is hereby rescinded*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement rescinds a total of $122,627,000. The House bill proposed a general reduction rather than rescissions. The conference agreement rescinds funds for projects that are no longer required due to Base Realignment and Closure, Part III, as well as funds for projects that are no longer required due to force structure changes or mission changes.

MILITARY CONSTRUCTION, AIR FORCE

(INCLUDING RESCISSIONS)

Amendment No. 7

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$1,021,567,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $1,021,567,000 for Military Construction, Air Force instead of $913,297,000 as proposed by the House and $963,726,000 as proposed by the Senate.

The conferees agree to the following additions and deletions to the amounts and line items as proposed by the House:

Alaska—Eielson AFB:	
Upgrade water treatment plant	+$3,750,000
Upgrade waste water plant	+1,750,000
Alaska—Elmendorf AFB: Runway repair	+2,500,000
Fort Richardson—Joint mobility center	+5,500,000
Florida—Eglin AFB: Renovate climatic test chamber, phase II	−20,000,000
Georgia—Moody AFB:	
Aircraft pavements	+9,000,000
Large aircraft hangar	+4,700,000
Georgia—Robins AFB: Add/alter logistical systems operations center	+3,000,000
Hawaii—Hickam AFB: Dormitory	+50,000
Louisiana—Barksdale AFB:	
Replace apron/fuel hydrants	+10,000,000
Apron lighting	+1,300,000
New Mexico—Holloman AFB: Fighter maintenance facility	+1,900,000
New Mexico—Kirtland AFB: Upgrade utility system	+8,000,000
North Dakota—Grand Forks AFB: Repair aircraft pavements	+10,200,000
North Dakota—Minot AFB: Repair runway/taxiway	+8,500,000
Ohio—Wright Patterson AFB:	
Acquisition management complex	+14,400,000
Fire station	+1,230,000
Fire protection system	+1,400,000
South Dakota—Ellsworth AFB: Consolidated admin center, phase I	+6,200,000
Tennessee—Memphis Naval Air Station:	
Add/alter high-bay technical training facility	−3,000,000
Alter technical training facility	−2,000,000
Renovate dormitory	−1,200,000
Virginia—Langley AFB: Base civil engineering complex, phase I	+1,300,000
Guam—Anderson AFB: Underground fuel storage tanks	−4,100,000
Oman—Thumrait AB: War readiness material covered storage facility	−1,800,000
Qatar—Doha: War readiness material warehouse	−5,500,000
Unspecified Worldwide Locations: General reduction	+51,190,000
Various locations:	
Rescission, fiscal year 1990	−8,315,000
Rescission, fiscal year 1991	−6,550,000
Rescission, fiscal year 1992	−12,980,000
Rescission, fiscal year 1993	−2,250,000

The conferees agree to fund all other items in conference at the level proposed by the House, as shown below:

Alabama—Maxwell AFB: Upgrade runway	$5,000,000
Arizona—Davis—Monthan AFB: Consolidated parts storage	0
California—Beale AFB: Education center/library	3,100,000
California—McClellan AFB:	
Convert to integrated media center	1,600,000
Repair aircraft parking apron	6,700,000
California—Travis AFB: Add/alter dormitories, phase VI	5,100,000
Florida—Tyndall AFB:	
Add to base supplies and equipment warehouse	3,200,000
Security police operations	2,400,000
Georgia—Moody AFB:	
Mission equipment storage	0
Large aircraft wash rack	0
Georgia—Robins AFB: Hydrant refueling system	0
Maryland—Fort George Meade: Add to operations facility	1,450,000
Nevada—Nellis AFB: Add/alter physical fitness training facility	4,350,000
New Mexico—Cannon AFB: Renovate and expand dormitory	3,100,000
New Mexico—Kirtland AFB: Add/alter base support facilities	0
North Dakota—Grand Forks AFB: Hydrant fuel system	3,250,000
North Dakota—Minot AFB: Fire station	0
Oklahoma—Altus AFB: Drop zone land acquisition	780,000

Oklahoma—Tinker AFB: Consolidated vehicle maintenance facility	0
Oklahoma—Vance AFB: Airfield pavements, phase IV	5,000,000
Texas—Brooks AFB: Center for environmental excellence	8,400,000
Texas—Dyess AFB: Add/alter dormitories	5,200,000
Utah—Hill AFB: Upgrade industrial wastewater collection system	6,200,000
Virginia—Langley AFB: Add/alter operations facility	0
Antigua Island—SLFI—upgrade backup generator	1,000,000
Ascension Island—SLFI—wastewater treatment plant	3,400,000
Diego Garcia:	
GPS instrumentation facility	1,700,000
Satellite tracking storage facility	560,000
Germany—Ramstein AB: Child development center	3,100,000
Greenland—Thule AB: Wastewater treatment plant	5,492,000
Turkey—Incirlik AB: Add/alter dormitories	2,400,000
United Kingdom—RAF Mildenhall: C–130 phase maintenance hangar	4,800,000
Unspecified Worldwide Locations: Planning and design	63,882,000

California—DOD/VA Joint Venture at Travis Air Force Base.—The conferees understand that the Department of Veterans Affairs (DVA) is currently negotiating with the Naval Facilities Command (NAVFAC) to manage the renovation and expansion of the David Grant Medical Center at Travis AFB. Once completed, the joint use facility will provide medical services to veterans in Northern California. The conferees are concerned that the veterans population will continue to be underserved in Northern California. The conferees are concerned that the veterans population will continue to be underserved in Northern California until such time as the new hospital additions are completed. Therefore, should the DVA and NAVFAC reach a project management agreement, the conferees expect and strongly encourage NAVFAC to use all means necessary to expedite the completion of the renovation and expansion of the medical center.

Florida—Homestead Air Force Base.—The conferees are concerned about the undue delay by the Air Force in initiating construction of facilities to support the 482nd F–16 Fighter Wing (AFRES) and the 301st Rescue Squadron (AFRES) at Homestead Air Force Base. Funds in the amount of $10 million for planning and $66 million for construction were previously appropriated in the 1992 Supplemental Appropriations Act (P.L. 102–368) for restoring airfield operations at Homestead Air Force Base. The conferees note that progress in restoring operations together with providing for Air Force Reserve facilities consistent with Base Realignment and Closure recommendations has been lacking. Therefore, the conferees direct the Air Force to submit to the Appropriation Subcommittees on Military Construction an expedited plan and schedule for construction of various facilities at Homestead Air Force Base no later than November 20, 1993.

Guam.—The conferees direct the Air Force to report to the Appropriation Subcommittees on Military Construction as to why a consolidation of military air assets on Guam cannot include the integration of the Navy with the Air Force in these times of reduced funding and changing military threats.

Amendment No. 8

Earmarks $63,882,000 for study, planning, design, architect and engineer services as proposed by the House instead of $58,180,000 as proposed by the Senate.

Amendment No. 9

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: *: Provided further, That of the funds appropriated for "Military Construction, Air Force" under Public Law 101–148, $8,315,000 is hereby rescinded: Provided further, That of the funds appropriated for "Military Construction, Air Force" under Public Law 101–519, $6,550,000 is hereby rescinded: Provided further, That of the funds appropriated for "Military Construction, Air Force" under Public Law 102–136, $12,980,000 is hereby rescinded: Provided further, That of the funds appropriated for "Military Construction, Air Force" under Public Law 102–380, $2,250,000 is hereby rescinded*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement rescinds a total of $30,095,000. The House bill proposed a general reduction rather than rescissions. The conference agreement rescinds funds for projects that are no longer required due to Base Realignment and Closure, Part III.

MILITARY CONSTRUCTION, DEFENSE-WIDE

(INCLUDING RESCISSION)

Amendment No. 10

Appropriates $562,008,000 for Military Construction, Defense-Wide, instead of $618,770,000 as proposed by the House and $524,165,000 as proposed by the Senate. The conferees agree to the following additions and deletions to the amounts and line items as proposed by the House:

Kentucky—Fort Campbell: Expand aircraft ramp, SOF	+$2,650,000
Louisiana—Fort Polk: Elementary school	+4,950,000
Maryland—Forest Glen (WRAIR): Army institute of research, phase II	−33,140,000
Maryland—Fort Meade: Supercomputer facility, phase I	−12,720,000
Ohio—Defense Electronics Supply Center, Dayton: Install gas-fired boilers	−6,000,000
Texas—Fort Sam Houston: Hospital replacement, phase VII	−25,000,000
Puerto Rico—Defense fuel support point, Roosevelt Roads: Fuel tankage	−5,800,000
Unspecified Worldwide Locations: General reduction	+14,298,000
Planning and Design: Special operations command	+2,000,000
Unspecified Minor Construction: Special operations command	+2,000,000
Various Locations: Rescission, fiscal year 1992	−15,500,000

The conferees agree to fund all other items in conference at the level proposed by the House, shown below:

Alaska—Elmendorf AFB: Hospital replacement, phase II	$37,000,000
Arizona—Yuma Marine Corps Air Station: Add/alter medical/dental clinic	6,000,000
Florida—Eglin Aux Field 9: Add to weapons maintenance shop	580,000
Rhode Island—Newport Naval Education and Training Center: Medical clinic, phase II	4,000,000
Diego Garcia: Fuel tankage	9,558,000
Overseas Classified: Powerhouse	10,755,000
Unspecified Worldwide Locations: Contingency construction	12,200,000
Planning and design:	
Defense level activities	10,305,000

Defense medical support activity	25,865,000
Unspecified Minor Construction:	
Joint Chiefs of Staff	5,975,000
DOD dependent schools	4,000,000
Defense medical support activity	3,757,000

Maryland—Walter Reed Army Institute of Research.—The conferees have provided $15 million in fiscal year 1994 for the next increment for construction of a new facility for the Walter Reed Institute of Research. The fact that this is less than the budget request should in no way be construed as a diminution in support.

The Committees on Appropriations have had a long standing interest in replacing the deplorable and inadequate facilities housing the Walter Reed Institute of Research. The conferees note that the Department has recommended studying the possible reutilization of existing facilities as a possible alternative to construction of a new facility. The conferees are aware that utilization of the Armed Forces Institute of Pathology (AFIP) was considered in 1987 as a possible alternative and was dismissed as having inadequate space and as being unacceptably expensive to modify. The conferees also note that while the National Performance Review recommended closure of the Uniformed Services University of the Health Sciences (USUHS), that facility includes most of the same deficiencies and cost implications as found in AFIP. The conferees wish to point out that ground breaking and award has already been delayed twice from an original date of November 1992 and subsequently June 1993 while the OSD studied and restudied the issue. The conferees are firm in their belief that this issue has been studied enough and want to reiterate that no more delays in award will be tolerated. The conferees therefore direct that an award be made for a new WRAIR not later than December 25, 1993. In addition, the conferees direct the Department to include the next increment of funding in the fiscal year 1995 budget and include the balance if required in the five year defense plan.

Amendment No. 11

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$44,405,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $44,405,000 for study, planning, design, architect and engineer services instead of $42,405,000 as proposed by the House and $37,405,000 as proposed by the Senate.

Amendment No. 12

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which rescinds $15,500,000. The House bill proposed a general reduction rather than a rescission. The conference agreement rescinds funds for projects that are no longer required due to Base Realignment and Closure, Part III.

Military Construction, Army National Guard

Amendment No. 13

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$302,719,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $302,719,000 for Military Construction, Army National Guard instead of $203,980,000 as proposed by the House and $291,250,000 as proposed by the Senate. The conferees agree to the following additions and deletions to the amounts and items as proposed by the House:

Alabama—Birmingham: Aviation support facility	+$4,907,000
Alabama—Montgomery: Organizational maintenance shop	+389,000
Arizona—Camp Navajo: Water filtration system	+1,000,000
California—Camp Parks/Dublin: Armory and OMS	−9,967,000
California—Van Nuys: Armory addition	+6,518,000
California—Burbank: OMS modification	+905,000
Connecticut—Bradley Field: Aviation facilities	+6,000,000
Florida—Eglin AFB: Range, multipurpose complex (MPRC)	−3,825,000
Hawaii—Molokai: Armory	+1,050,000
Hawaii—Oahu: Armory	+4,300,000
Indiana—Camp Atterbury: State military facility	+16,000
Indiana—Evansville: Armory and/or OMS	+801,000
Iowa—Camp Dodge:	
Battalion complex, phase II	+3,800,000
Consolidated paint facility	+37,000
Kansas—Fort Riley: Maintenance and training equipment site wash rack	+3,398,000
Kentucky—Fort Knox: Maintenance and training equipment site facility	+10,000,000
Massachusetts—Ayer: Add/alter combined support maintenance shop	+3,002,000
Minnesota—Various Locations: Alter fourteen armories and maintenance shops	−4,527,000
Mississippi—Camp Shelby: Vehicle wash facility	+5,000,000
Mississippi—Jackson: Armory	+2,550,000
Missouri—Fort Leonard Wood: Armory/OMS	+2,349,000
New Mexico—White Sands:	
OMS	+2,940,000
Tactical site	+1,995,000
Maintenance and training equipment site facility	+3,570,000
North Dakota—Bismark: Aviation C–12 hangar	−656,000
Oklahoma—Camp Gruber/Braggs: Modified record fire range	−937,000
Oregon—Camp Withycombe: Support maintenance shop	+7,569,000
Oregon—Pendleton: Aviation support facility	+3,515,000
Pennsylvania—Fort Indiantown Gap:	
Flight simulator and aeromedical physiology complex	−4,584,000
State military facility	+9,200,000
South Carolina—Columbia:	
Combined support/maintenance shop	+8,616,000
Land acquisition	+950,000
South Carolina—Leesburg: Wash rack/fuel facility	+1,009,000
South Carolina—Summerville: OMS	+834,000
South Dakota—Sioux Falls (Joe Foss Field):	
Armory addition	+30,000
Maintenance shop	+1,700,000
Tennessee—Camden: Armory addition	+714,000
Tennessee—Milan: Armory	+1,357,000
Tennessee—Tiptonville: Armory	+1,157,000

Tennessee—Waverly: Armory addition	**+587,000**
Texas—Corpus Christi:	
Add/Alter armory	**+2,719,000**
Organizational maintenance shop	**+991,000**
Texas—San Antonio: Organizational maintenance shop	**−1,578,000**
Vermont—Jericho: Training facility	**+3,200,000**
Wisconsin—Camp Williams; Combined maintenance facility	**+11,900,000**
Wyoming—Camp Guernsey: Barracks renovation	**+3,338,000**
Unspecified Worldwide Locations—Planning and design	**+900,000**

The conferees agree to fund all other items in conference at the level proposed by the House, as shown below:

Alabama—Fort McClellan: Training site addition	0
Arizona—Marana: Dining facility/dormitory	$2,919,000
Arkansas—Camp Robinson: Training site, sewer improvement	4,424,000
California—Fort Funston/San Francisco: Military vehicle storage building	739,000
California—Fort Irwin: Maintenance pad covers	1,265,000
Connecticut—Groton: Avation facilities	0
Illinois—Rock Island: Armory	3,310,000
Indiana—Camp Atterbury: Training facilities, phase VIB	7,545,000
Indiana—Indianapolis: Combined support/maintenance facility	0
Indiana—Lafayette: Armory and OMS	3,116,000
Iowa—Des Moines: Remove underground fuel tanks	0
Kansas—Nickell Barracks (Salina): Training site complex, phase I	6,168,000
Kansas—Salina:	
Training site, phase I	0
Training site, phase II	0
Louisiana—Ruston: Armory/OMS	0
Maryland—Hagerstown: Add/alter armory	1,776,000
Minnesota—Inver Grove Heights:	
Armory and OMS	4,571,000
Armory	0
Minnesota—Various Locations: Add/alter seven armories	3,225,000
Mississippi—Camp Shelby: Regional school facility, phase I	6,000,000
Mississippi—Camp McCain: Range and training area improvements	5,500,000
Mississippi—Greenville: Armory	2,230,000
Mississippi—Tupelo: Add/alter Army aviation support facility	3,210,000
Mississippi—Various Locations: Add/alter six armories	5,204,000
Missouri—Poplar Bluff: Armory and OMS	2,842,000
Nebraska—Camp Ashland: Education facility	0
Nevada—Las Vegas/Clark County: Armory, phase II	1,430,000
Oklahoma—Frederick: Armory	1,200,000
Pennsylvania—Johnstown:	
Addition to joint Armed Forces aviation facility	5,004,000
Armory expansion	3,309,000
South Carolina—Leesburg: Regional NCO academy	0
South Carolina—Eastover: Add/alter armory	0
Tennessee—Elizabethton: Armory storage addition	100,000
Tennessee—Jefferson City: Armory	952,000
Tennessee—Sevierville: Armory	1,352,000
Tennessee—Symrna:	
Armory	3,934,000
Warehouse	710,000
Texas—Lubbock: OMS and AFRC, phase II	1,726,000
Texas—Weslaco: Armory and OMS	5,567,000
Wisconsin—West Bend: Armory	0
Guam—Barrigada: U.S. Property/fiscal office/warehouse, phase II	1,573,000

California—Camp Parks / Dublin-Planning and Design.—The conferees agree that, within planning and design funds for the Army National Guard, $900,000 shall be allocated for design of an armory and an organizational maintenance shop.

Texas—Lubbock: Organizational Maintenance Shops AFRC, Phase II.—The conferees have agreed to provide funding of

$1,726,000 for this project but understand that additional funding may be required. If additional funding is required, the Department should request necessary reprogramming of funds.

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

Amendment No. 14

Appropriates $247,491,000 for Military Construction, Air National Guard instead of $161,761,000 as proposed by the House and $254,923,000 as proposed by the Senate. The conferees agree to the following additions and deletions to the amounts and line items as proposed by the House:

Alaska—Eielson AFB: system maintenance hanger	+$8,900,000
Georgia—Robins AFB: Support and hydrant system	+5,750,000
Hawaii—NAS Barking Sands: Forward air control point facility	+8,500,000
Hawaii—Hickam AFB: Consolidated support facility	+9,700,000
Idaho: Idaho training range	+6,700,000
Kentucky—Standiford (Louisville): Relocation facilities, phase IV	+5,000,000
Massachusetts—Barnes Airport: Alter ops/training facility	+600,000
Massachusetts—Otis ANGB: Communications/electronics facility	+3,000,000
Massachusetts—Worcester ANGB: Base supply warehouse	+390,000
Mississippi—Gulfport Mpt: Troop camp quarters	−5,300,000
Missouri—Rosecrans Memorial Airport (St. Josephs): Jet fuel storage	+4,000,000
Nebraska—Lincoln MAP: Replace heat system	+1,500,000
Nevada—Reno IAP: Aircraft arresting systems	−1,830,000
New Hampshire—Pease AFB: Upgrade KC–135 hydrant refueling system	−5,100,000
Oregon—Portland IAP: Drainage improvements	+350,000
Oregon—Kingsley Field/Klamath Falls: Repair runway/taxiway	+8,500,000
Unspecified Worldwide Locations: General reduction	+35,070,000

The conferees agree to fund all other items in conference at the level proposed by the House, as shown below:

Alabama—Abston ANG station (Montgomery)	0
Alabama—Birmingham MAP: Road relocation	6,200,000
Alabama—Maxwell AFB: Runway extension	0
Georgia—Dobbins AFB (Marietta): Small arms range	0
Illinois—Capital MAP (Springfield): Upgrade runway	2,300,000
Indiana—Hulman Field (Terre Haute) dining hall and medical training facility	3,800,000
Iowa—Des Moines MAP: Jet fuel storage complex	4,000,000
Iowa—Sioux Gateway Airport (Sergeant Bluff): Base civil engineer maintenance complex	2,650,000
Massachusetts—Barnes Airport: Vehicle maintenance shop	0
Ohio—Toledo Express Airport:	
Add/alter operations and training facility	1,800,000
Taxiway and arm/dearm pads	1,950,000
Oregon—Portland IAP: Site restoration	0
South Dakota—Joe Foss Field (Sioux Falls): Power check pad	0
Texas—Kelly AFB (San Antonio): Base supply warehouse	4,300,000
Virginia—Richmond IAP: Fuel storage complex	0
Guam—Andersen AFB: Base supplies and equipment warehouse	400,000
Puerto Rico—Puerto Rico IAP:	
Add/alter F–16 avionics shop	320,000
Alter fuel systems maintenance facility	750,000
Upgrade F–16 aircraft parking ramp security system	2,000,000
Unspecified Worldwide Locations: Planning and design	10,868,000

Idaho—Gowen Field: Idaho Training Range.—The conferees agree to provide funding of $6,700,000 to the Air National Guard for the development of expanded training capabilities for the Air Force's composite wing at Mountain Home Air Force Base. The con-

ferees support the concept of expanded training capabilities for the composite wing and understand that an environmental impact statement is being prepared. However, the conferees direct that none of the funds provided for expansion of training capabilities be obligated until the Secretary of Defense has provided to the Committees on Appropriations certification in writing that the funding is required for training and readiness and is consistent with the full environmental impact statement that reviews alternatives.

MILITARY CONSTRUCTION, ARMY RESERVE

Amendment No. 15

Appropriates $102,040,000 for Military Construction, Army Reserve instead of $87,825,000 as proposed by the House and $124,794,000 as proposed by the Senate. The conferees agree to the following additions and deletion to the amounts and line items as proposed by the House:

Georgia—Fort McPherson: Command headquarters, phase I	+$15,000,000
South Carolina—Fort Jackson: USARC/OMS/DS shop	−2,728,000
Unspecified Worldwide Locations: Planning and design	+1,943,000

The conferees agree to fund all other items in conference at the level proposed by the House, as shown below:

California-Los Alamitos: Logistic Facility	0
New Jersey—Fort Dix: Upgrade range 65	2,700,000
Washington—Fort Lawton: Reserve center	0

Washington—Fort Lawton (Seattle): Planning and Design.—The conferees agree that, within planning and design funds for the Army Reserve, $1,943,000 shall be allocated for design of a reserve center. The conferees also direct that construction funds for the reserve center be included in the Department's fiscal year 1995 budget submission.

MILITARY CONSTRUCTION, NAVAL RESERVE

Amendment No. 16

Appropriates $25,029,000 for Military Construction, Naval Reserve instead of $28,647,000 as proposed by the House and $25,013,000 as proposed by the Senate. The conferees agree to the following additions and deletion to the amounts and line items as proposed by the House:

Maryland—Baltimore: MCRC improvements	+$460,000
Michigan—NRRC Detroit: MCRC repair/construction	+698,000
New Jersey—West Trenton: MCRC replacement conversion	+264,000
Washington—Bangor: Reserve center	+3,000,000
Unspecified Worldwide Locations: General reduction	−8,040,000

The Conferees agree to fund all other items in conference at the level proposed by the House, as shown below:

Louisiana—Naval Support Activity New Orleans: Marine Corps reserve force headquarters	$8,700,000
Unspecified Worldwide Locations: Planning and design	1,815,000

MILITARY CONSTRUCTION, AIR FORCE RESERVE

Amendment No. 17

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$74,486,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $74,486,000 for Military Construction, Air Force Reserve instead of $66,136,000 as proposed by the House and $68,427,000 as proposed by the Senate. The conferees agree to the following additions to the amounts and line items as proposed by the House:

Florida—Homestead AFB: Medical training facility	+$2,750,000
New York—Niagara Falls IAP: Corrosion control facility	+800,000
Unspecified Worldwide Locations: General reduction	+4,800,000

The conferees agree to fund all other items in conference at the level proposed by the House, as shown below:

Georgia—Dobbins AFB:	
Firing range	$1,900,000
Flight simulation center	6,000,000
Ohio—Youngstown MAP: Munitions maintenance complex	0
Unspecified Worldwide Locations: Planning and design	3,989,000

NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE

Amendment No. 18

Restores House language stricken by the Senate which appropriates $140,000,000 for North Atlantic Treaty Organization Infrastructure programs.

Amendment No. 19

Deletes Senate language which established a new account for construction outside the United States, appropriated $300,000,000 and included a certification requirement regarding burdensharing.

FAMILY HOUSING, ARMY

Amendment No. 20

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$228,885,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $228,885,000 for Construction, Family Housing, Army instead of $218,785,000 as proposed by the House and $228,385,000 as proposed by the Senate. The conferees agree to the following addition to the amounts and line items as proposed by the House:

Construction improvements	+$10,100,000

The conferees agree to fund the other item in conference at the level proposed by the House, as shown below:

Nevada-Hawthorne AAP: Demolish Abandoned Housing Units	$500,000

Construction Improvements.—Within the total funding amount for Construction Improvements, $4,400,000 shall be allocated to Fort Richardson, Alaska and $5,700,000 for Fort Wainwright, Alaska.

Amendment No. 21

Appropriates $1,069,601,000 for Operation and Maintenance, Family Housing, Army instead of $1,067,922,000 as proposed by the House and $1,125,601,000 as proposed by the Senate. The conferees agree to the following addition to the amounts and line items as proposed by the House:

General reduction	+$1,679,000

Amendment No. 22

Appropriates a total of $1,298,486,000 for Family Housing, Army instead of $1,286,707,000 as proposed by the House and $1,353,986,000 as proposed by the Senate. This sum is derived from the conference agreement on amendments numbered 20 and 21.

FAMILY HOUSING, NAVY AND MARINE CORPS

(INCLUDING RESCISSIONS)

Amendment No. 23

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$370,208,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $370,208,000 for Construction, Navy and Marine Corps instead of $367,769,000 as proposed by the House and $354,738,000 as proposed by the Senate. The conferees agree to the following addition and deletions to the amounts and line items as proposed by the House:

Washington-NAS Whidbey Island: 106 units	+$10,000,000
Various locations:	
Rescission, fiscal year 1990	−14,100,000
Rescission, fiscal year 1991	−25,018,000
Rescission, fiscal year 1993	−1,253,000
Construction improvements	−7,561,000

The conferees agree to fund the other item in conference as proposed by the House, as shown below:

United Kingdom: Naval Activities London (purchase 81 leased units)	$15,470,000

Amendment No. 24

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$772,055,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $772,055,000 for Operation and Maintenance, Family Housing, Navy and Marine Corps instead of $781,952,000 as proposed by the House and $835,055,000 as proposed by the Senate.

The conferees agree to the following deletion to the amounts and line items as proposed by the House:

General reduction	–$9,897,000

Amendment No. 25

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$1,142,263,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates a total of $1,142,263,000 for Family Housing, Navy and Marine Corps instead of $1,149,721,000 as proposed by the House and $1,189,793,000 as proposed by the Senate. This sum is derived from the conference agreement on amendments numbered 23 and 24.

Amendment No. 26

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: *: Provided, That of the funds appropriated for "Family Housing, Navy and Marine Corps" under Public Law 101–148, $14,100,000 is hereby rescinded : Provided further, That of the funds appropriated for "Family Housing, Navy and Marine Corps" under Public Law 101–519, $25,018,000 is hereby rescinded: Provided further, That of the funds appropriated for "Family Housing, Navy and Marine Corps" under Public Law 102–380, $1,253,000 is hereby rescinded*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement rescinds a total of $40,371,000 previously appropriated for construction of new family housing units and for improvement of existing family housing units. These projects are no longer required due to Base Realignment and Closure, Part III.

Family Housing, Air Force

(INCLUDING RESCISSIONS)

Amendment No. 27

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$187,035,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $187,035,000 for Construction, Family Housing, Air Force instead of $192,197,000 as proposed by the House and $195,035,000 as proposed by the Senate. The conferees agree to the following addition and deletions to the amounts and line items as proposed by the House:

Italy—Comiso AB (purchase 460 leased units)	−$20,200,000
Various locations:	
Rescission, fiscal year 1992	−6,400,000
Rescission, fiscal year 1993	−48,702,000
Construction improvements	+15,038,000

The conferees agree to fund the other items in conference at the level proposed by the House, as shown below:

Illinois-Scott AFB: Housing Relocation, Phase II	$10,000,000
Planning	11,901,000

Construction Improvements.—Within the total funding amount for Construction Improvements, up to $15,100,000 shall be allocated to Nellis Air Force Base, Nevada and $6,900,000 shall be allocated to Kirtland Air Force Base, New Mexico.

Amendment No. 28

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$790,912,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $790,912,000 for Operations and Maintenance, Family Housing, Air Force instead of $805,847,000 as proposed by the House and $853,912,000 as proposed by the Senate.

The conferees agree to the following deletion to the amounts and line items as proposed by the House:

General reduction	−$14,935,000

Amendment No. 29

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$977,947,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates a total of $977,947,000 for Family Housing, Air Force instead of $998,044,000 as proposed by the House and $1,048,947,000 as proposed by the Senate. This sum is derived from the conference agreement on amendments numbered 27 and 28.

Amendment No. 30

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which rescinds a total of $55,102,000 previously appropriated for construction of new family housing units and for improvement of existing family housing units. These projects are no longer required due to Base Realignment and Closure, Part III.

FAMILY HOUSING, DEFENSE-WIDE

Amendment No. 31

Appropriates $26,337,000 for Operation and Maintenance, Family Housing, Defense-Wide instead of $25,711,000 as proposed by the House and $27,337,000 as proposed by the Senate. The conferees agree to the following addition to the amounts and line items as proposed by the House:

General reduction	+$626,000

Amendment No. 32

Appropriates a total of $26,496,000 for Family Housing, Defense-Wide instead of $25,870,000 as proposed by the House and $27,496,000 as proposed by the Senate. This sum is derived from the conference agreement on amendment numbered 31.

HOMEOWNERS ASSISTANCE FUND

Amendment No. 33

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which allows the appropriated amount for Homeowners Assistance Fund, Defense to remain available until expended.

BASE REALIGNMENT AND CLOSURE ACCOUNT, PART I

Amendment No. 34

Appropriates $12,830,000 as proposed by the Senate instead of $27,870,000 as proposed by the House. The conferees agree that the reduction of $15,040,000 from the House proposed amount shall be applied against the Navy's allocation because of projects no longer needed as a result of the approved 1993 base closure recommendations.

Amendment No. 35

Deletes House language which establishes a minimum funding level for environmental restoration.

Base Realignment and Closure Account, Part II

Amendment No. 36

Appropriates $1,526,310,000 as proposed by the Senate instead of $1,800,500,000 as proposed by the House. The reduction reflects projects no longer required as a result of approved 1993 base closure recommendations.

Washington—Naval Station Everett: Bachelor Enlisted Quarters.—The conferees direct that within Base Realignment and Closure, Part II funds, $7,450,000 be for the construction of a Bachelor Enlisted Quarters at Naval Station Everett, which is required due to the closure of Sand Point. The conferees urge the Navy to continue to support the ongoing facility requirements at Naval Station Everett, and direct the Navy to include funds for a second Bachelor Enlisted Quarters as part of its fiscal year 1995 Military Construction budget submission.

Amendment No. 37

Deletes House language which restricts appropriated funds to the approved 1991 base realignments and closures.

Base Realignment and Closure Account, Part III

Amendment No. 38

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$1,144,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement appropriates $1,144,000,000 for Base Realignment and Closure, Part III instead of $1,200,000,000 as proposed by the House and $1,197,000,000 as proposed by the Senate.

New Jersey—McGuire AFB.—The conferees direct that, within Base Realignment and Closure, Part III funds, the Air Force allocate the funds necessary to start construction at McGuire Air Force Base of housing and dormitory space in order to alleviate the housing shortage that the accelerated realignment at McGuire will create.

Amendment No. 39

Deletes House language which restricts appropriated funds to the approved 1993 base realignments and closures.

General Provisions

Amendment No. 40

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken by said amendment, insert:

SEC. 122. (a) Notwithstanding any other provision of law, the Secretary of the Army shall transfer, no later than September 30, 1994, without reimbursement or transfer of funds, to the Architect of the Capitol, a portion of the real property, including improvements thereon, consisting of not more than 100 acres located at Fort George G. Meade in Anne Arundel County, Maryland, as determined under subsection (c).

(b) The Architect of the Capitol shall, upon completion of the survey performed pursuant to subsection (c) and the transfer effected pursuant to subsection (a), utilize the transferred property to provide facilities to accommodate the varied long term storage and service needs of the Library of Congress and other Legislative Branch agencies.

(c) The exact acreage and legal description of the property to be transferred under this section shall be determined by a survey satisfactory to the Architect of the Capitol and the Secretary of the Army, and in consultation with officials of Anne Arundel County, Maryland.

(d) Any real property and improvements thereon transferred pursuant to this section shall be under the jurisdiction of the Architect of the Capitol, subject to the rules and regulations providing for the use of such property as may be approved by the House Office Building Commission and the Senate Committee on Rules and Administration: *Provided,* that any existing improvements made available by the Architect to the Librarian of Congress, under the direction of the Joint Committee on the Library, or hereafter erected upon such real property pursuant to law for the purposes of providing for the long term storage and service needs of the Library of Congress shall be subject to the provisions of sections 136, 141 and 167 to 167j of Title 2, United States Code.

(e) Portions of the real property and any improvements thereon transferred pursuant to this section that are not determined to be immediately required for storage or service needs by the Architect are authorized to be leased temporarily to the Secretary of the Army: *Provided,* That nominal lease payments made by the Secretary of the Army shall be credited to the appropriation "Architect of the Capitol, Library Buildings and Grounds, Structural and Mechanical Care, No Year".

(f) There are authorized to be appropriated to the Architect of the Capitol such sums as may be necessary to carry out the provisions of this section.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The previously recommended transfer of property located at the Army Research Laboratory, Woodbridge Research Facility, Virginia, to the Architect of the Capitol for use of storage and service needs of the Library of Congress and the Legislative Branch agencies has not been endorsed by the conferees. Instead, property in Fort George G. Meade, Maryland, has been identified for such use. The property in Fort George G. Meade identified which would meet the Library's goal is located generally north of State route 32 and south of Rock Avenue and First Street. The Architect is directed to consult with appropriate officials of Anne Arundel County, Maryland, concerning the exact acreage and legal description of the

property. The conferees direct that the Architect of the Capitol and Secretary of the Army enter into an agreement to determine the utilities and services to be provided by the Secretary to the property. The conferees further direct that the Architect provide landscaping to maintain an appearance appropriate for the surrounding area.

Amendment No. 41

Deletes Senate language which proposed a general reduction.

Amendment No. 42

Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken by said amendment, insert:

SEC. 124. None of the funds appropriated in this Act or any other Act may be used for the purposes of establishing any criminal detention or rehabilitation facility or program at Fort George Meade, Maryland.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement deletes House language which waives certification requirements for a defense access road at Camp Dodge, Iowa, and inserts language which prohibits the use of funds in this act or any other act during fiscal year 1994 to be used for the purposes of establishing any criminal detention or rehabilitation facility or program at Fort George G. Meade, Maryland.

Amendment No. 43

Restores House language stricken by the Senate regarding compliance with the "Buy American Act".

Amendment No. 44

Restores House language stricken by the Senate regarding in the purchase of American-made equipment and products.

Amendment No. 45

Restores House language stricken by the Senate regarding fraudulent "Made in America" labels.

Amendment No. 46

Deletes language proposed by the Senate which would earmark $4,400,000 for a Dial Central Office Facility at Fitzsimons Medical Center, Colorado. Funding for this project is provided under Military Construction, Army account.

Amendment No. 47

Deletes language proposed by the Senate which would earmark $2,800,000 for an ACMI support facility at the Gulfport-Biloxi Regional Airport, Mississippi.

Amendment No. 48

Deletes language proposed by the Senate regarding land transfer in Hawaii.

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
ALABAMA		
ARMY		
ANNISTON ARMY DEPOT		
AMMUNITION DEMILITARIZATION FACILITY, PHASE IV....	110,900	110,900
FORT RUCKER		
OPERATIONS FACILITY..............................	1,150	1,150
PERSONNEL SERVICES FACILITY......................	---	14,400
PETROLEUM LAB AND FUEL STORAGE...................	5,800	5,800
BARRACKS...	20,000	20,000
ROAD UPGRADE.....................................	---	1,300
AIR FORCE		
GUNTER AFB		
CHILD DEVELOPMENT CENTER.........................	2,700	2,700
EMERGENCY POWER GENERATOR PLANT..................	1,200	1,200
HAZARDOUS WASTE ACCUMULATION FACILITY............	310	310
SPILL CONTAINMENT CONTROLS.......................	470	470
MAXWELL AFB		
AIR FORCE QUALITY CENTER.........................	4,650	4,650
UPGRADE RUNWAY...................................	9,200	5,000
SPILL CONTAINMENT CONTROLS.......................	970	970
TAXIWAY/RAMP.....................................	3,800	3,800
UNDERGROUND FUEL STORAGE TANKS...................	1,700	1,700
UPGRADE UTILITY SYSTEMS, PHASE I.................	5,050	5,050
DEFENSE-WIDE		
FORT MCCLELLAN		
FT MCCLELLAN ELEMENTARY SCHOOL ADDITION..........	2,798	2,798
ARMY NATIONAL GUARD		
CULLMAN		
ADD/ALTER COMBINED SUPPORT MAINTENANCE SHOP.......	---	5,070
BIRMINGHAM		
AVIATION SUPPORT FACILITY........................	---	4,907
MONTGOMERY		
ORGANIZATIONAL MAINT SHOP........................	---	389
MOBILE		
ORGANIZATIONAL MAINTENANCE SHOP..................	502	502
AIR NATIONAL GUARD		
ABSTON ANG STATION (MONTGOMERY)		
COMMUNICATIONS AND ELECTRONICS TRAINING FACILITY..	693	693
BIRMINGHAM MAP		
AIRCRAFT MAINTENANCE HANGAR......................	5,500	5,500
FUEL CELL DOCK...................................	4,400	4,400
ROAD RELOCATION..................................	---	6,200
DANNELLY FIELD (MONTGOMERY)		
VEHICLE MAINTENANCE COMPLEX......................	1,750	1,750
ARMY RESERVE		
BIRMINGHAM		
BATTLE PROJECTION CENTER.........................	4,719	4,719
TOTAL, ALABAMA...................................	188,262	216,328
ALASKA		
ARMY		
FORT RICHARDSON		
JOINT MOBILITY CENTER............................	---	10,000
FORT WAINWRIGHT		
WASTE OIL BURNING POWER PLANT....................	---	740
AIR FORCE		
CAPE ROMANZOV AFS		
REPLACE TRAMWAY SYSTEM...........................	3,350	3,350

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
EIELSON AFB		
CHILD DEVELOPMENT CENTER	5,400	5,400
FIRE TRAINING FACILITY	2,400	2,400
UPGRADE WATER TREATMENT PLANT	---	3,750
UPGRADE WASTE WATER PLANT	---	1,750
ELMENDORF AFB		
ADD TO SANITARY SEWER SYSTEM	5,100	5,100
CHILD DEVELOPMENT CENTER	5,070	5,070
CORROSION CONTROL FACILITY	5,975	5,975
DINING FACILITY	6,800	6,800
HAZARDOUS WASTE STORAGE FACILITY	3,900	3,900
MUNITIONS EQUIPMENT FACILITY	1,860	1,860
MUNITIONS MAINTENANCE FACILITY	2,100	2,100
RUNWAY REPAIR	---	2,500
FORT RICHARDSON		
JOINT MOBILITY CENTER	---	5,500
DEFENSE-WIDE		
DEF REUTILIZATION & MKTG OFC FAIRBANKS		
COVERED STORAGE	6,500	6,500
ELMENDORF AIR FORCE BASE		
HOSPITAL REPLACEMENT, PHASE II	135,000	37,000
AIR NATIONAL GUARD		
KULIS ANGB (ANCHORAGE)		
REPLACE UNDERGROUND STORAGE TANKS	1,100	1,100
EIELSON AFB		
FUEL SYSTEM MAINTENANCE HANGAR	---	8,900
ARMY RESERVE		
FORT RICHARDSON		
ADD/ALTER USARC/OMS/DS-GS/AMSA/STORAGE	10,324	10,324
TOTAL, ALASKA	194,879	130,019
ARIZONA		
ARMY		
FORT HUACHUCA		
BATTALION HEADQUARTERS	4,800	4,800
GENERAL PURPOSE ADMINISTRATIVE FACILITY	4,050	4,050
AIR FORCE		
DAVIS-MONTHAN AFB		
UNDERGROUND FUEL STORAGE TANKS	650	650
VEHICLE MAINTENANCE FACILITY	---	5,500
LUKE AFB		
DINING FACILITY	4,700	4,700
FIRE TRAINING FACILITY	800	800
FLOOD CONTROL	---	6,000
UNDERGROUND FUEL STORAGE TANKS	1,250	1,250
NAVAJO ARMY DEPOT		
ALTER MINUTEMAN II STORAGE FACILITIES	7,250	7,250
DEFENSE-WIDE		
YUMA MARINE CORPS AIR STATION		
ADD/ALTER MEDICAL/DENTAL CLINIC	---	6,000
ARMY NATIONAL GUARD		
CAMP NAVAJO		
WATER FILTRATION SYSTEM	---	1,000
MARANA		
OMS	---	553
DINING FACILITY/DORMITORY	---	2,919

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
AIR NATIONAL GUARD		
TUCSON IAP		
ADD/ALTER COMMUNICATIONS FACILITY	700	700
REPLACE UNDERGROUND STORAGE TANKS	440	440
TOTAL, ARIZONA	24,640	46,612
ARKANSAS		
AIR FORCE		
LITTLE ROCK AFB		
ADD/ALTER ENGINE INSPECTION AND REPAIR SHOP - DBOF	1,200	1,200
ADD/ALTER CHILD DEVELOPMENT CENTER - DBOF	2,250	2,250
ALTER OPERATIONS CENTER	1,050	1,050
ARMY NATIONAL GUARD		
CAMP ROBINSON		
ARMORY	3,205	3,205
RANGE, MODIFIED RECORD FIRE	907	907
TRAINING SITE, SEWER IMPROVEMENT	4,223	4,424
TRAINING SITE, UTILITIES RENOVATION	1,275	1,275
AIR NATIONAL GUARD		
LITTLE ROCK AFB		
AIRCREW TRAINING FACILITY	3,750	3,750
FT SMITH MAP		
AIRCRAFT CORROSION CONTROL FACILITY	1,100	1,100
TOTAL, ARKANSAS	18,960	19,161
CALIFORNIA		
ARMY		
FT IRWIN		
WHOLE BARRACKS RENEWAL	5,900	5,900
NAVY		
ALAMEDA NAVAL AIR STATION		
CONTROL TOWER COMPLEX	4,700	---
BARSTOW MARINE CORPS LOGISTICS BASE		
INDUSTRIAL WASTE TREATMENT PLANT	8,690	8,690
CAMP PENDLETON MARINE CORPS AIR STATION		
RADAR AIR TRAFFIC CONTROL FACILITY ADDITION	3,850	3,850
CAMP PENDLETON MARINE CORPS BASE		
WEAPONS STORAGE	480	480
AUTOMATED FIELD FIRING RANGE	1,340	1,340
SEWERAGE FACILITY	7,930	7,930
WATER DISTRIBUTION SYSTEM IMPROVEMENTS	1,380	1,380
EMERGENCY OFF-BASE WATER SUPPLY MAIN	---	750
FLOOD PROTECTION-SEWAGE TREATMENT PLANT	---	1,000
RELOCATE WATER WELLS	---	1,800
REPLACE DRAINAGE STRUCTURES	---	3,000
EL TORO MARINE CORPS AIR STATION		
MAINTENANCE HANGAR ADDITION	1,950	---
FALLBROOK NAVAL WEAPONS STATION ANNEX		
HARM MISSILE MAGAZINES - DBOF	4,630	4,630
LEMOORE NAVAL AIR STATION		
FIRE FIGHTING TRAINING FACILITY	1,930	1,930
SAN DIEGO FLEET AND INDUSTRIAL SUPPLY CENTER		
FIRE PROTECTION SYSTEMS - DBOF	2,270	2,270
SAN DIEGO MARINE CORPS RECRUIT DEPOT		
WAREHOUSE	1,130	1,130
SAN DIEGO NAVAL HOSPITAL		
CHILD DEVELOPMENT CENTER	2,700	2,700
SAN DIEGO NAVAL TRAINING CENTER		
FIRE PROTECTION SYSTEM	700	---

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
TWENTYNINE PALMS MARCORP AIR-GRND COMB CTR		
ACADEMIC INSTRUCTION BUILDING ADDITION............	600	600
ANTI-ARMOR TRACKING RANGE MODERNIZATION...........	3,940	3,940
WEAPONS STORAGE..................................	3,360	3,360
AIR FORCE		
BEALE AFB		
EDUCATION CENTER/LIBRARY..........................	---	3,100
EDWARDS AFB		
CHILD DEVELOPMENT CENTER..........................	5,900	5,900
UNDERGROUND FUEL STORAGE TANKS....................	5,400	5,400
MCCLELLAN AFB		
FIRE PROTECTION ACFT FACILITIES - DBOF............	1,900	1,900
CONVERT TO INTEGRATED MEDIA CENTER................	---	1,600
REPAIR AIRCRAFT PARKING APRON.....................	---	6,700
TRAVIS AFB		
ADD/ALTER DORMITORIES, PHASE VI...................	---	5,100
AIRCRAFT GENERAL PURPOSE MAINTENANCE SHOP.........	11,200	11,200
UNDERGROUND FUEL STORAGE TANKS - DBOF.............	2,840	2,840
VANDENBERG AFB		
HARDWARE STORAGE FACILITY.........................	3,500	3,500
SLFI-TPQ-18 RADAR FACILITY........................	2,408	2,408
SLFI-UPGRADE FIRE PROTECTION SYSTEM...............	1,600	1,600
UNDERGROUND FUEL STORAGE TANKS....................	1,700	1,700
UPGRADE ELECTRICAL SYSTEM.........................	11,520	11,520
DEFENSE-WIDE		
MARCH AFB		
DEFENSE REUTILIZATION/MARKETING OFFICE RELOCATION.	630	630
EDWARDS AIR FORCE BASE		
LIFE SAFETY UPGRADE...............................	1,700	1,700
ARMY NATIONAL GUARD		
FORT FUNSTON/SAN FRANCISCO		
MILITARY VEHICLE STORAGE BUILDING.................	---	739
FORT IRWIN		
MAINTENANCE PAD COVERS............................	---	1,265
FRESNO/SHIELDS		
ARMORY AND ORGANIZATIONAL MAINTENANCE SHOP........	---	8,147
VAN NUYS		
ARMORY ADDITION...................................	---	6,518
BURBANK		
OMS MODIFICATION..................................	---	905
AIR NATIONAL GUARD		
FRESNO ANGB		
REPLACE UNDERGROUND FUEL STORAGE TANKS............	490	490
ONTARIO INTERNATIONAL AIRPORT (ANG)		
REPLACE UNDERGROUND FUEL STORAGE TANKS............	310	310
NAVY RESERVE		
NAVAL STATION SAN DIEGO		
CONSTRUCTION BATTALION UNIT FACILITY..............	1,000	1,000
AIR FORCE RESERVE		
TRAVIS AFB		
AERIAL PORT TRAINING FACILITY.....................	3,050	3,050
ALTER RESERVE OPERATIONS AND TRAINING FACILITY....	4,000	4,000
TOTAL, CALIFORNIA.............................	116,628	149,902
COLORADO		
ARMY		
FITZSIMONS ARMY MEDICAL CENTER		
DIAL CENTRAL OFFICE FACILITY......................	---	4,400

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
FORT CARSON		
RANGE CONTROL FACILITY	4,050	4,050
AIR FORCE		
BUCKLEY ANG BASE		
COMMUNICATION DATA PROCESSING FACILITY	39,000	39,000
CHEYENNE MT COMPLEX AFB		
UPGRADE ELECTRICAL SERVICE	4,450	4,450
PETERSON AFB		
ADD/ALTER INTEGRATION SUPPORT FACILITY	16,400	16,400
PRECISION MEASUREMENT EQUIPMENT LABORATORY	2,200	2,200
TEST AND EVALUATION SUPPORT FACILITY	2,430	2,430
US AIR FORCE ACADEMY		
ADD/ALTER WASTEWATER TREATMENT PLANT	7,100	7,100
ENHANCED FLIGHT SCREENER HANGARS	3,800	3,800
UNDERGROUND FUEL STORAGE TANKS	780	780
AIR NATIONAL GUARD		
BUCKLEY ANGB (AURORA)		
F-16 WEAPONS RELEASE SHOP	1,300	1,300
AIR FORCE RESERVE		
PETERSON AFB		
ORGANIZATIONAL MAINTENANCE SUPPORT FACILITY	1,200	1,200
TOTAL, COLORADO	82,710	87,110
CONNECTICUT		
NAVY		
NEW LONDON NAVAL SUBMARINE BASE		
BACHELOR ENLISTED QUARTERS MODERNIZATION	14,800	14,800
ELECTRICAL DISTRIBUTION IMPROVEMENTS	8,190	8,190
HAZARDOUS WASTE TRANSFER FACILITY	1,450	1,450
INDUSTRIAL WASTE TREATMENT FACILITY	5,700	5,700
PIER IMPROVEMENTS	---	4,200
STEAM TURBINE GENERATOR	6,600	6,600
ARMY NATIONAL GUARD		
BRADLEY FIELD		
AVIATION FACILITIES	---	6,000
AIR NATIONAL GUARD		
BRADLEY FIELD (GRAMBE)		
ADD/ALTER BASE CIVIL ENGINEER FACILITY	510	510
TOTAL, CONNECTICUT	37,250	47,450
DELAWARE		
AIR FORCE		
DOVER AFB		
ADD/ALTER DINING FACILITY - DBOF	2,500	2,500
DORMITORY - DBOF	3,200	4,400
INSTALL EMISSION CONTROL DEVICES	860	860
AIR NATIONAL GUARD		
GREATER WILMINGTON AIRPORT		
COMMUNICATIONS FACILITY	900	900
REPLACE UNDERGROUND FUEL STORAGE TANKS	890	890
TOTAL, DELAWARE	8,350	9,550
DISTRICT OF COLUMBIA		
NAVY		
WASHINGTON COMMANDANT NAVAL DISTRICT		
CHILD DEVELOPMENT CENTER	1,480	1,480
FIRE PROTECTION SYSTEM	1,630	1,630

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
WASHINGTON NAVAL RESEARCH LABORATORY		
NAVAL CENTER FOR SPACE TECHNOLOGY	1,980	1,980
SPECIAL PROJECTS BUILDING	400	400
AIR FORCE		
BOLLING AIR FORCE BASE		
ADD TO CHILD DEVELOPMENT CENTER	2,000	2,000
TOTAL, DISTRICT OF COLUMBIA	7,490	7,490
FLORIDA		
NAVY		
CECIL FIELD NAVAL AIR STATION		
SANITARY WASTEWATER SYSTEM UPGRADE	1,500	---
JACKSONVILLE NAVAL AIR STATION		
BACHELOR ENLISTED QUARTERS	13,800	13,800
HELICOPTER WASH AND RINSE FACILITY	620	620
MAYPORT NAVAL STATION		
AIR EMISSIONS CONTROL	3,260	3,260
PENSACOLA NAVAL AIR STATION		
RADAR AIR TRAFFIC CONTROL CENTER	1,880	1,880
WATER SURVIVAL TRAINING FACILITY	4,540	4,540
AIR FORCE		
CAPE CANAVERAL AFS		
SEWAGE TREATMENT PLANT	11,900	11,900
SLFI-BACKUP POWER	2,500	2,500
SLFI-BACKUP POWER	800	800
SLFI-UPGRADE WATER SUPPLY MAINS	1,200	1,200
UNDERGROUND FUEL STORAGE TANKS	400	400
UPGRADE FIRE SYSTEM	2,400	2,400
EGLIN AFB		
AIRCRAFT ENGINE TEST FACILITY	1,600	1,600
RENOVATE CLIMATIC TEST CHAMBER, PHASE II	57,000	37,000
REPLACE POL PIPELINE	3,300	3,300
UPGRADE HYDRANT FUELING SYSTEM	4,550	4,550
VEHICLE MAINTENANCE/WAREHOUSE FACILITIES	2,600	2,600
EGLIN AFB AUXILIARY FIELD 9		
ADD/ALTER DORMITORIES	4,479	4,479
UPGRADE SANITARY SEWAGE SYSTEMS	1,750	1,750
UPGRADE STORM SEWAGE SYSTEM	1,600	1,600
PATRICK AFB		
ALTER MAINTENANCE HANGAR	2,000	2,000
UNDERGROUND FUEL STORAGE TANKS	1,850	1,850
TYNDALL AFB		
ADD TO BASE SUPPLIES AND EQUIPMENT WAREHOUSE	---	3,200
BASE SUPPLY LOGISTICS CENTER	2,600	2,600
SECURITY POLICE OPERATIONS	---	2,400
DEFENSE-WIDE		
EGLIN AUX FIELD 9		
ADD TO SUPPLY WAREHOUSE/WRM STORAGE	1,502	1,502
ADD/ALTER AVIONICS SHOP	4,500	4,500
MH60G HELICOPTER HANGAR	5,700	5,700
MUNITIONS MAINTENANCE FACILITY	2,550	2,550
SQUADRON OPERATIONS FACILITY MC130	2,750	2,750
SQUADRON OPERATIONS FACILITY MH60G	2,250	2,250
ADD TO WEAPONS MAINTENANCE SHOP	330	580
ARMY NATIONAL GUARD		
EGLIN AFB		
RANGE, MULTIPURPOSE COMPLEX (MPRC)	3,825	---
AIR NATIONAL GUARD		
JACKSONVILLE IAP		
REPLACE UNDERGROUND FUEL STORAGE TANKS	1,150	1,150

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
AIR FORCE RESERVE		
HOMESTEAD AFB		
MEDICAL TRAINING FACILITY	---	2,750
MACDILL AFB		
AEROMEDICAL EVACUATION FACILITY	750	750
TOTAL, FLORIDA	153,436	136,711
GEORGIA		
ARMY		
FORT BENNING		
BARRACKS MODERNIZATION	18,500	18,500
MULTIPURPOSE MACHINE GUN RANGE	1,650	1,650
WHOLE BARRACKS RENEWAL	17,500	17,500
FORT GILLEM		
PHYSICAL FITNESS CENTER	---	2,600
FT STEWART/HUNTER AAF		
CARGO HANDLING FACILITY	4,500	4,200
EXPAND AMMUNITION STORAGE AREA	3,600	3,600
HARDSTAND	8,700	9,400
RAILROAD TRACK IMPROVEMENT	2,000	3,100
NAVY		
ALBANY MARINE CORPS LOGISTICS BASE		
CHILD DEVELOPMENT CENTER	940	940
KINGS BAY NAVAL SUBMARINE BASE		
DIKES	3,730	3,730
UTILITIES AND SITE IMPROVEMENTS	7,190	7,190
KINGS BAY TRIDENT TRAINING FACILITY		
FIRE FIGHTING TRAINING FACILITY	3,870	3,870
AIR FORCE		
MOODY AFB		
AIRCRAFT PAVEMENTS	---	9,000
LARGE AIRCRAFT HANGAR	---	4,700
ROBINS AFB		
J-STARS ADD/ALTER MAINTENANCE COMPLEX	9,300	9,300
J-STARS ADD/ALTER OPERATIONS COMPLEX	4,100	4,100
J-STARS ADD/ALTER UTILITIES	3,500	3,500
J-STARS SQUADRON OPERATIONS/AIRCRAFT MAINT UNIT	7,500	7,500
ADD/ALTER LOGISTICAL SYSTEMS OPERATIONS CENTER	3,000	3,000
ADD/ALTER DORMITORIES - DBOF	4,300	4,300
AIRCRAFT SUPPORT EQUIPMENT PAINT FACILITY	970	970
UPGRADE INDSTRL WASTEWATER TRTMNT AND DSPSL PLANT	10,700	10,700
DEFENSE-WIDE		
ROBINS AFB		
LINWOOD ELEMENTARY SCHOOL ADDITION	1,580	1,580
ROBINS ELEMENTARY SCHOOL ADDITION	1,580	1,580
AIR NATIONAL GUARD		
ROBINS AFB		
SUPPORT AND HYDRANT SYSTEM	---	5,750
PETROLEUM OPERATIONS COMPLEX	600	600
REPLACE UNDERGROUND FUEL STORAGE TANKS	1,150	1,150
LEWIS B. WILSON AIRPORT (ANG) (MACON)		
REPLACE UNDERGROUND FUEL STORAGE TANKS	340	340
MCCOLLUM ANG STATION (KENNESAW)		
REPLACE UNDERGROUND FUEL STORAGE TANKS	315	315
SAVANNAH ANG COMMUNICATIONS STATION		
REPLACE UNDERGROUND FUEL STORAGE TANKS	330	330
SAVANNAH COMBAT READINESS TRAINING SITE		
FIRE DETECTION AND SUPPRESSION SYSTEMS	1,650	1,650
REPLACE UNDERGROUND FUEL STORAGE TANKS	315	315

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
SAVANNAH MAP		
REFUELING VEHICLE PARKING AND OPS COMPLEX.........	990	990
ARMY RESERVE		
FORT MCPHERSON		
COMMAND HQ, PHASE I..............................	---	15,000
AIR FORCE RESERVE		
DOBBINS AFB		
FIRING RANGE.....................................	---	1,900
FLIGHT SIMULATION CENTER..........................	---	6,000
TOTAL, GEORGIA.................................	124,400	170,850
HAWAII		
ARMY		
SCHOFIELD BARRACKS		
MULTI-PURPOSE FAMILY SERVICE CENTER................	16,000	16,000
OPERATIONS FACILITY..............................	2,600	2,600
NAVY		
BARBERS POINT NAVAL AIR STATION		
CHILD DEVELOPMENT CENTER..........................	2,700	2,700
FIRE FIGHTING TRAINING FACILITY..................	1,350	---
HONOLULU COMP&TELCOMM AREA MASTER STA EPAC		
BACHELOR ENLISTED QUARTERS MODERNIZATION..........	4,390	4,390
BACHELOR ENLISTED QUARTERS MODERNIZATION..........	4,730	4,730
PEARL HARBOR COM OCEANOGRAPHIC SYS PACIFIC		
BERTHING PIER.....................................	16,780	16,780
PEARL HARBOR NAV INACTIVE SHIP MAINT FAC		
INACTIVE SHIPS PIER..............................	2,620	2,620
PEARL HARBOR NAVAL SUBMARINE BASE		
BACHELOR ENLISTED QUARTERS COMPLEX................	25,500	25,500
ENLISTED MESS HALL MODERNIZATION..................	2,640	2,640
SUBMARINE BERTING WHARF..........................	26,000	26,000
PEARL HARBOR NAVY PUBLIC WORKS CENTER		
INDUSTRIAL WASTE TREATMENT PLANT - DBOF...........	18,560	18,560
WASTEWATER COLLECTION SYSTEM IMPROVEMENT - DBOF...	8,980	8,980
AIR FORCE		
HICKAM AFB		
DORMITORY..	5,950	9,500
MILSTAR COMMUNICATIONS GROUND TERMINAL............	2,200	2,200
UNDERGROUND FUEL STORAGE TANKS....................	2,100	2,100
KAENA POINT		
POWER PLANT......................................	7,350	7,350
DEFENSE-WIDE		
DEFENSE FUEL SUPPORT POINT PEARL HARBOR		
POL LABORATORY FACILITY..........................	2,250	2,250
ARMY NATIONAL GUARD		
MOLOKAI		
ARMORY...	---	1,050
OAHU		
ARMORY...	---	4,300
KAUAI		
RANGE, KNOWN DISTANCE UPGRADE.....................	334	334
AIR NATIONAL GUARD		
HICKAM AFB		
FUEL SYSTEM MAINT AND CORROSION CONTROL FACILITY..	5,300	5,300
NAS BARKING SANDS		
FORWARD AIR CONTROL POINT FACILITY................	---	8,500
HICKAM AFB		
CONSOLIDATED SUPPORT FACILITY.....................	---	9,700

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
NAVY RESERVE		
NAVAL STATION PEARL HARBOR		
CONSTRUCTION BATTALION UNIT ADDITION	500	500
TOTAL, HAWAII	158,834	184,584
IDAHO		
ARMY NATIONAL GUARD		
GOWEN FIELD		
COMBAT VEHICLE TRANSITION COMPLEX	5,044	5,044
USPFO ADMIN OFFICE/WAREHOUSE ADDITION	1,391	1,391
HOMEDALE		
ARMORY	1,157	1,157
AIR NATIONAL GUARD		
BOISE AIRPORT		
FIRE STATION AND AGE FACILITY	1,750	1,750
GOWEN FIELD		
IDAHO TRAINING RANGE	---	6,700
TOTAL, IDAHO	9,342	16,042
ILLINOIS		
AIR FORCE		
SCOTT AFB		
INTEROPERABILITY TEST AND TRAINING FACILITY	5,000	5,000
MUNITIONS STORAGE FACILITY/LAND ACQUISITION - DBOF	2,450	2,450
ARMY NATIONAL GUARD		
ROCK ISLAND		
ARMORY	---	3,310
AIR NATIONAL GUARD		
CAPITAL MAP (SPRINGFIELD)		
ALTER STORM DRAINAGE DISPOSAL	500	500
UPGRADE RUNWAY	---	2,300
GREATER PEORIA AIRPORT		
ADD/ALTER F-16 AIRCRAFT AVIONICS SHOP	840	840
ARMY RESERVE		
ARGONNE		
USARC/OMS	10,381	10,381
TOTAL, ILLINOIS	19,171	24,781
INDIANA		
NAVY		
CRANE NSWCD		
ORDNANCE ENVIRONMENTAL TEST FACILITY	---	9,600
ARMY NATIONAL GUARD		
CAMP ATTERBURY		
STATE MILITARY FACILITY	---	5,400
TRAINING FACILITIES, PHASE VIB	---	7,545
RANGE, INF SQUAD BATTLE COURSE	1,156	1,156
RANGE, MOD RECORD FIRE UPGRADE	654	654
EVANSVILLE		
ARMORY AND ORGANIZATIONAL MAINTENANCE SHOP	---	6,050
LAFAYETTE		
ARMORY AND ORGANIZATIONAL MAINTENANCE SHOP	---	3,116
AIR NATIONAL GUARD		
HULMAN FIELD (TERRE HAUTE)		
DINING HALL AND MEDICAL TRAINING FACILITY	---	3,800
REPLACE UNDERGROUND FUEL STORAGE TANKS	950	950

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
FT WAYNE MAP		
REPLACE UNDERGROUND FUEL STORAGE TANKS	1,350	1,350
TOTAL, INDIANA	4,110	39,621
IOWA		
ARMY NATIONAL GUARD		
CAMP DODGE		
ARMORY	---	4,550
BATTALION COMPLEX, PHASE II	---	3,800
CONSOLIDATED PAINT FACILITY	---	1,500
AIR NATIONAL GUARD		
DES MOINES MAP		
ADD/ALTER DINING AND MEDICAL TRAINING FACILITY	1,800	1,800
JET FUEL STORAGE COMPLEX	---	4,000
REPLACE UNDERGROUND FUEL STORAGE TANKS	880	880
SIOUX GATEWAY AIRPORT (SERGEANT BLUFF)		
BASE CIVIL ENGINEER MAINTENANCE COMPLEX	---	2,650
MUNITIONS MAINTENANCE AND STORAGE COMPLEX	---	2,850
TOTAL, IOWA	2,680	22,030
KANSAS		
ARMY		
FORT RILEY		
BARRACKS & ADMIN RENOVATION	---	9,900
BATTLE SIMULATION FACILITY	---	4,742
AIR FORCE		
MCCONNELL AFB		
CONTROL TOWER CAB	900	900
LAND RESTRICTIVE EASEMENT ACQUISITION	1,000	1,000
ARMY NATIONAL GUARD		
NICKELL BARRACKS (SALINA)		
TRAINING SITE COMPLEX, PHASE I	---	6,168
FORT RILEY		
MAINTENANCE AND TRAINING EQUIPMENT SITE WASH RACK	---	3,398
AIR NATIONAL GUARD		
FORBES FIELD (FORBES)		
REPLACE UNDERGROUND FUEL STORAGE TANKS	1,400	1,400
MCCONNELL AFB (WITCHITA)		
ALTER MEDICAL TRAINING AND TELECOM	890	890
TOTAL, KANSAS	4,190	28,398
KENTUCKY		
ARMY		
FORT CAMPBELL		
AIRFIELD IMPROVEMENTS	3,950	3,950
DINING FACILITIES MODERNIZATION	3,500	3,500
MOBILIZATION WAREHOUSE	850	850
WHOLE BARRACKS RENEWAL	32,000	32,000
FORT KNOX		
MAINTENANCE FACILITY	12,200	12,200
MULTIPURPOSE TRAINING RANGE	4,150	4,150
WHOLE BARRACKS RENEWAL	25,000	25,000
DEFENSE-WIDE		
FORT CAMPBELL		
EXPAND AIRCRAFT RAMP, SOF	---	2,650
SOF BATTALION HEADQUARTERS BUILDINGS	4,300	4,300
ELEMENTARY SCHOOL	8,982	8,982

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
LINCOLN ELEMENTARY SCHOOL ADDITION................	1,900	1,900
MAHAFFEY MIDDLE SCHOOL ADDITION....................	2,300	2,300
FORT KNOX		
KINGSOLVER/VAN VOORHIS ELEMENTARY SCHOOL...........	1,600	1,600
SIX GYMNASIUM ADDITIONS............................	6,107	6,107
ARMY NATIONAL GAURD		
FORT KNOX		
MAINTENANCE AND TRAINING EQUIPMENT SITE FACILITY..	---	10,000
AIR NATIONAL GUARD		
STANDIFORD (LOUISVILLE)		
RELOCATION FACILITIES, PHASE IV....................	---	5,000
TOTAL, KENTUCKY................................	106,839	124,489
LOUISIANA		
AIR FORCE		
BARKSDALE AFB		
UPGRADE BULK STORAGE BASINS........................	1,600	1,600
WEAPONS STORAGE AREA SECURITY......................	960	960
REPLACE APRON/FUEL HYDRANTS........................	---	10,000
APRON LIGHTING.....................................	---	1,300
DEFENSE-WIDE		
FORT POLK		
ELEMENTARY SCHOOL..................................	---	4,950
AIR NATIONAL GUARD		
HAMMOND COMMUNICATION STATION		
REPLACE UNDERGROUND STORAGE TANKS..................	350	350
NEW ORLEANS NAS		
REPLACE UNDERGROUND FUEL STORAGE TANKS.............	350	350
ARMY RESERVE		
NEW ORLEANS		
LAND ACQUISITION...................................	645	645
NAVY RESERVE		
NAVAL AIR STATION NEW ORLEANS		
ORDNANCE COMPLEX...................................	1,900	1,900
NAVAL SUPPORT ACTIVITY NEW ORLEANS		
MARINE CORPS RESERVE FORCE HEADQUARTERS............	---	8,700
AIR FORCE RESERVE		
BARKSDALE AFB		
WELDING AND MACHINE SHOP...........................	600	600
TOTAL, LOUISIANA...............................	6,405	31,355
MAINE		
NAVY		
KITTERY PORTSMOUTH NAVAL SHIPYARD		
HAZARDOUS WASTE STORAGE FACILITY - DBOF............	4,780	4,780
ARMY NATIONAL GUARD		
NORWAY		
ARMORY EXPANSION/REHABILITATION....................	1,380	1,380
TOTAL, MAINE...................................	6,160	6,160
MARYLAND		
ARMY		
ABERDEEN PROVING GROUND		
APPLIED INSTRUCTION FACILITY.......................	14,000	14,000
TARGET ASSEMBLY AND STORAGE FACILITY...............	1,800	1,800
UPGRADE RANGE COMPLEX..............................	4,450	4,450
EDGEWOOD ARSENAL		
CHILD DEVELOPMENT CENTER...........................	---	1,450

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
NAVY		
ANNAPOLIS, NAVAL ACADEMY		
PHYSICAL THERAPY/TRAINING/MEETING CENTER..........	---	6,500
BETHESDA NATIONAL NAVAL MEDICAL CENTER		
CHILD DEVELOPMENT CENTER..........................	3,090	3,090
INDIAN HEAD NSWC		
HAZARDOUS WASTE TREATMENT FACILITY................	---	3,400
NAS PATUXENT RIVER		
SEWAGE TREATMENT PLANT............................	---	1,000
PATUXENT RIVER NAWC		
ADVANCE SYSTEM INTEGRATION FACILITY, PHASE II.....	---	10,000
HAZARDOUS MATERIAL STORAGE FACILITY...............	---	3,400
JET ENGINE TEST CELL..............................	---	4,900
AIR FORCE		
ANDREWS AFB		
AIR FREIGHT TERMINAL - DBOF.......................	4,400	4,400
FIRE TRAINING FACILITY - DBOF.....................	1,000	1,000
UPGRADE COMPOSITE ADMIN FACILITY - DBOF...........	9,940	9,940
UPGRADE SANITARY SEWER SYSTEMS....................	2,650	2,650
FORT GEORGE MEADE		
ADD TO OPERATIONS FACILITY........................	1,450	1,450
DEFENSE-WIDE		
FORT DETRICK		
BIOLOGICAL INCINERATOR............................	4,300	4,300
FOREST GLEN (WRAIR)		
ARMY INSTITUTE OF RESEARCH, PHASE II..............	48,140	15,000
FORT MEADE		
OPS BLDG 1 ROADWAY STRUCTURAL ENHANCEMENT.........	5,910	5,910
SUPERCOMPUTER FACILITY, PHASE I...................	52,720	35,000
ARMY NATIONAL GUARD		
HAGERSTOWN		
ADD/ALTER ARMORY..................................	---	1,776
TOWSON		
ADD/ALTER ARMORY..................................	2,823	2,823
AIR NATIONAL GUARD		
ANDREWS AFB (CAMP SPRINGS)		
ADD/ALTER AVIONICS AND ECM POD FACILITY...........	1,100	1,100
REPLACE UNDERGROUND FUEL STORAGE TANKS............	890	890
GLENN L MARTIN AIRPORT (BALTIMORE)		
REPLACE UNDERGROUND FUEL STORAGE TANKS............	1,000	1,000
NAVY RESERVE		
NAF WASHINGTON		
EQUIPMENT OPERATIONS FACILITY.....................	2,500	2,500
BALTIMORE		
MCRC IMPROVEMENTS.................................	---	460
AIR FORCE RESERVE		
ANDREWS AFB		
CONSTRUCT AIRCRAFT PARKING APRON..................	8,000	8,000
REPLACE AIRCRAFT PARKING APRON....................	13,373	13,373
TOTAL, MARYLAND...................................	183,536	165,562
MASSACHUSETTS		
ARMY NATIONAL GUARD		
AYER		
ADD/ALTER COMBINED SUPPORT MAINTENANCE SHOP.......	---	3,002
AIR FORCE RESERVE		
WESTOVER AFB		
MEDICAL TRAINING FACILITY.........................	2,600	2,600

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
AIR NATIONAL GUARD		
BARNES AIRPORT		
ALTER OPS/TRAINING FACILITY........................	---	600
OTIS ANGB		
COMMUNICATIONS/ELECTRONICS FACILITY................	---	3,000
WORCESTER ANGB		
BASE SUPPLY WAREHOUSE..............................	---	390
TOTAL, MASSACHUSETTS...............................	2,600	9,592
MICHIGAN		
AIR NATIONAL GUARD		
ALPENA COUNTY REGIONAL AIRPORT		
UPGRADE WATER DISTRIBUTION SYSTEM..................	1,400	1,400
SELFRIDGE ANGB (MT CLEMENS)		
REPLACE UNDERGROUND FUEL STORAGE TANKS.............	710	710
WK KELLOGG REGIONAL AIRPORT (KELLOGG)		
ADD/ALTER FUEL CELL AND CORROSION CONTROL FACILITY	1,100	1,100
NAVY RESERVE		
NRRC DETROIT		
RESERVE CENTER ADDITION............................	3,100	3,100
MCRC REPAIR/CONSTRUCTION...........................	---	698
TOTAL, MICHIGAN....................................	6,310	7,008
MINNESOTA		
ARMY NATIONAL GUARD		
CAMP RIPLEY		
ORGANIZATIONAL MAINTENANCE SHOPS...................	2,625	2,625
RANGE, MULTI-PURPOSE (HEAVY).......................	3,185	3,185
INVER GROVE HEIGHTS		
ARMORY AND ORGANIZATIONAL MAINTENANCE SHOP.........	---	4,571
VARIOUS LOCATIONS		
ADD/ALTER SEVEN ARMORIES...........................	---	3,225
AIR NATIONAL GUARD		
DULUTH ANGB		
REPLACE UNDERGROUND FUEL STORAGE TANKS.............	1,000	1,000
TOTAL, MINNESOTA...................................	6,810	14,606
MISSISSIPPI		
NAVY		
CBC GULFPORT		
FAMILY SERVICE CENTER..............................	---	2,000
CHILD DEVELOPMENT CENTER...........................	---	2,400
AIR FORCE		
COLUMBUS AFB		
UPGRADE AIRFIELD LIGHTING..........................	2,900	2,900
KEESLER AFB		
FIRE TRAINING FACILITY.............................	690	690
UNDERGROUND FUEL STORAGE TANKS.....................	600	600
UPGRADE SANITARY SEWER SYSTEM......................	2,920	2,920
UPGRADE STUDENT DORMITORY..........................	4,500	4,500
ARMY NATIONAL GUARD		
CAMP SHELBY		
REGIONAL SCHOOL FACILITY, PHASE I..................	---	6,000
VEHICLE WASH FACILITY..............................	---	5,000
CAMP MCCAIN		
RANGE AND TRAINING AREA IMPROVEMENTS...............	---	5,500
GREENVILLE		
ARMORY...	---	2,230

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
JACKSON		
ARMORY	---	2,550
TUPELO		
ADD/ALTER ARMY AVIATION SUPPORT FACILITY	---	3,210
VARIOUS LOCATIONS		
ADD/ALTER SIX ARMORIES	---	5,204
AIR NATIONAL GUARD		
ALLEN C THOMPSON FIELD (JACKSON)		
REPLACE UNDERGROUND FUEL STORAGE TANKS	730	730
GULFPORT MPT		
REPLACE UNDERGROUND FUEL STORAGE TANKS	335	335
UPGRADE ELECTRICAL DISTRIBUTION SYSTEM	850	850
TOTAL, MISSISSIPPI	13,525	47,619
MISSOURI		
ARMY		
FORT LEONARD WOOD		
OPERATIONS FACILITY	1,000	1,000
AIR FORCE		
WHITEMAN AFB		
B-2 ADD/ALTER MUNITIONS STORAGE FACILITY	3,338	3,338
B-2 AIRCRAFT APRON/TAXIWAY UPGRADE	3,400	3,400
B-2 AIRCRAFT MAINTENANCE DOCK	14,500	14,500
B-2 DEFENSE ACCESS ROADS	7,150	7,150
B-2 HYDRANT FUELING SYSTEM LOOP, PHASE II	2,700	2,700
B-2 UPGRADE BASE ROADS	5,900	5,900
B-2 UTILITY UPGRADE / LAND ACQUISITION	4,850	4,850
B-2 VEHICLE MAINTENANCE FACILITY	1,700	1,700
ARMY NATIONAL GUARD		
FORT CROWDER		
TROOP MEDICAL TRAINING FACILITY	386	386
FORT LEONARD WOOD		
ARMORY/OMS	---	2,349
POPLAR BLUFF		
ARMORY AND ORGANIZATIONAL MAINTENANCE SHOP	---	2,842
AIR NATIONAL GUARD		
JEFFERSON BARRACKS ANG SITE (ST LOUIS)		
ALTER COMMUNICATIONS ELECTRONICS TRAINING FACILITY	2,800	2,800
UPGRADE DINING HALL	720	720
ROSECRANS MEMORIAL AIRPORT (ST JOSEPHS)		
REPLACE UNDERGROUND FUEL STORAGE TANKS	1,250	1,250
JET FUEL STORAGE	---	4,000
TOTAL, MISSOURI	49,694	58,885
MONTANA		
AIR FORCE		
MALMSTROM AFB		
BASE ENGINEERING COMPLEX - DBOF	6,200	6,200
UNDERGROUND FUEL STORAGE TANKS	1,500	1,500
ARMY NATIONAL GUARD		
FT WM HENRY HARRISON		
MEDICAL UNIT TRAINING FACILITY	501	501
AIR NATIONAL GUARD		
GREAT FALLS IAP		
MEDICAL TRAINING AND DINING HALL	2,900	2,900
REPLACE UNDERGROUND FUEL STORAGE TANKS	400	400
TOTAL, MONTANA	11,501	11,501

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
NEBRASKA		
AIR FORCE		
OFFUTT AFB		
ADD TO EMERGENCY BACK-UP POWER	2,300	2,300
REPAIR AIRFIELD PAVEMENTS AND LIGHTING	8,700	8,700
DEFENSE-WIDE		
OFFUTT AIR FORCE BASE		
LIFE SAFETY UPGRADE	1,100	1,100
AIR NATIONAL GUARD		
LINCOLN MAP		
ALTER MAINTENANCE HANGAR	---	7,300
REPLACE HEAT SYSTEM	---	1,500
FIRE STATION	1,850	1,850
TOTAL, NEBRASKA	13,950	22,750
NEVADA		
ARMY		
HAWTHORNE AAP		
CONTAINER HOLDING PADS	7,000	7,000
REHABILITATE RAIL LINE	---	4,700
NAVY		
FALLON NAVAL AIR STATION		
DIXIE VALLEY LAND ACQUISITION	---	1,600
AIR FORCE		
NELLIS AFB		
ADD/ALTER PHYSICAL FITNESS TRAINING FACILITY	---	4,350
BOMBER LIVE ORDNANCE LOADING APRON	---	4,100
UPGRADE POL TANKS	1,650	1,650
ARMY NATIONAL GUARD		
LAS VEGAS/CLARK COUNTY		
ARMORY, PHASE II	---	1,430
AIR NATIONAL GUARD		
RENO IAP		
AIRCRAFT ARRESTING SYSTEMS	1,830	---
FLIGHT SIMULATOR BUILDING	---	400
REPLACE UNDERGROUND FUEL STORAGE TANKS	460	460
TOTAL, NEVADA	10,940	25,690
NEW HAMPSHIRE		
AIR NATIONAL GUARD		
PEASE AFB		
UPGRADE KC-135 HYDRANT REFUELING SYSTEM	5,100	---
NEW JERSEY		
ARMY		
FORT MONMOUTH		
SATELLITE CONTROL SYSTEM	7,500	7,500
PICATINNY ARSENAL		
ADVANCED WARHEAD DEVELOPMENT FACILITY	---	4,400
EXPLOSIVES DEVELOPMENT FACILITY	---	6,100
NAVY		
EARLE NAVAL WEAPONS STATION		
EXPLOSIVES HOLDING YARD - DBOF	1,290	1,290
HAZARDOUS WASTE STORAGE FACILITY - DBOF	870	870
MATERIALS HNDLG EQUIP SERV CTR ALT - DBOF	420	420
AIR NATIONAL GUARD		
ATLANTIC CITY AIRPORT		
FIRE STATION	1,350	1,350
REPLACE UNDERGROUND FUEL STORAGE TANKS	1,900	1,900

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
ARMY RESERVE		
FORT DIX		
UPGRADE RANGE 65	---	2,700
NAVY RESERVE		
NRC KEARNY		
INSTALL AIR CONDITIONING	800	800
WEST TRENTON		
MCRC REPLACEMENT CONVERSION	---	264
TOTAL, NEW JERSEY	14,130	27,594
NEW MEXICO		
ARMY		
WHITE SANDS MISSILE RANGE		
CHILD DEVELOPMENT CENTER	---	3,300
TARGET TRACK	2,900	2,900
AIR FORCE		
CANNON AFB		
BASE CIVIL ENGINEERING COMPLEX	6,150	6,150
FIRE TRAINING FACILITY	1,000	1,000
RENOVATE AND EXPAND DORMITORY	---	3,100
SOUND SUPPRESSOR SUPPORT PAD	665	665
UNDERGROUND FUEL STORAGE TANKS	1,100	1,100
HOLLOMAN AFB		
ADD/ALTER DORMITORIES	6,400	6,400
SEWER EFFLUENT SYSTEM	1,800	1,800
FIGHTER MAINTENANCE FACILITY	---	1,900
UNDERGROUND FUEL STORAGE TANKS	1,000	1,000
KIRTLAND AFB		
AEROSPACE ENGINEERING FACILITY	3,167	3,167
ALTER DORMITORY	5,100	5,100
COMPOSITE MATERIALS LABORATORY	5,750	5,750
SPACE STRUCTURES LABORATORY	6,200	6,200
UPGRADE ELECTRICAL DISTRIBUTION SYSTEM	6,844	6,844
UPGRADE UTILITY SYSTEM	---	8,000
DEFENSE-WIDE		
CANNON AIR FORCE BASE		
ADD/ALTER HOSPITAL AND LIFE SAFETY/SEISMIC UPGRADE	13,600	13,600
ARMY NATIONAL GUARD		
WHITE SANDS		
OMS	---	2,940
TACTICAL SITE	---	1,995
MAINTENANCE AND TRAINING EQUIPMENT SITE FACILITY	---	3,570
AIR NATIONAL GUARD		
KIRTLAND AFB (KIRTLAND)		
ALTER MAINTENANCE SHOPS	345	345
ALTER OPERATIONAL TRAINING FACILITY	390	390
POWER CHECK PAD WITH SOUND SUPPRESSOR	800	800
AIR FORCE RESERVE		
KIRTLAND AFB		
CIVIL ENGINEERING TRAINING FACILITY	900	900
TOTAL, NEW MEXICO	64,111	88,916
NEW YORK		
ARMY		
U S MILITARY ACADEMY		
WHOLE BARRACKS RENEWAL	13,800	13,800

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
AIR NATIONAL GUARD		
GABRESKI AIRPORT (WEST HAMPTON BEACH)		
WASTE WATER TREATMENT PLANT	---	2,700
HANCOCK FIELD (SYRACUSE)		
FIRE STATION	1,350	1,350
NIAGARA FALLS INTERNATIONAL AIRPORT		
ALTER KC-135 OPERATIONS FACILITIES	1,650	1,650
SCHENECTADY AIRPORT		
REPLACE UNDERGROUND FUEL STORAGE TANKS	1,050	1,050
STEWART AIRPORT (NEWBURGH)		
INDUSTRIAL WASTE HOLDING POND	320	320
AIR FORCE RESERVE		
NIAGARA FALLS IAP		
BASE COMMUNICATIONS CENTER	1,300	1,300
CORROSION CONTROL FACILITY	---	800
TOTAL, NEW YORK	19,470	22,970
NORTH CAROLINA		
ARMY		
FORT BRAGG		
OVERHILLS TRACT LAND ACQUISITION	---	15,000
SEWAGE TREATMENT PLANT UPGRADE	540	540
SIMMONS AIRFIELD LAND ACQUISITION	---	1,450
TACTICAL EQUIPMENT SHOP	7,100	7,100
TACTICAL EQUIPMENT SHOP	23,000	23,000
WHOLE BRIGADE BARRACKS COMPLEX	71,600	71,600
LIBRARY	---	5,500
NAVY		
CAMP LEJEUNE MARINE CORPS BASE		
LANDFILL	7,690	7,690
MULTI-PURPOSE TRAINING RANGE	5,300	5,300
WASTEWATER TREATMENT PLANT, PHASE I	28,300	28,300
CAMP LEJEUNE NAVAL HOSPITAL		
BACHELOR ENLISTED QUARTERS	2,370	2,370
CHERRY POINT MARINE CORPS AIR STATION		
AIRCRAFT MAINTENANCE TRAINING FACILITY	4,040	4,040
COMMUNICATIONS CENTER	3,460	3,460
AIR FORCE		
POPE AFB		
ADD/ALTER DORMITORIES	4,300	4,300
DINING FACILITY	4,300	4,300
SEYMOUR JOHNSON AFB		
ADD/ALTER DORMITORIES	4,900	4,900
MUNITIONS MAINTENANCE SUPPORT FACILITY	480	480
DEFENSE-WIDE		
FORT BRAGG		
MEDICAL TRAINING FACILITY	18,450	18,450
SOF BARRACKS COMPLEX	20,000	20,000
FT BRAGG ELEMENTARY SCHOOL	8,838	8,838
HOSPITAL REPLACEMENT, PHASE II	195,000	35,000
CAMP LEJEUNE MARINE CORPS BASE		
AUDITORIUM/BAND ROOM, HIGH SCHOOL	1,465	1,465
MULTI-PURPOSE ROOM, STONE STREET ELEMENTARY SCHOOL	328	328
ARMY NATIONAL GUARD		
FAYETTEVILLE		
ORGANIZATIONAL MAINTENANCE SHOP	473	473
ARMY RESERVE		
MOREHEAD CITY		
ADD/ALTER USARC/OMS/AREA MAINT SPT ACTIVITY	9,335	9,335
TOTAL, NORTH CAROLINA	421,269	283,219

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
NORTH DAKOTA		
AIR FORCE		
GRAND FORKS AFB		
HYDRANT FUEL SYSTEM	---	3,250
REPAIR AIRCRAFT PAVEMENTS	---	10,200
UNDERGROUND FUEL STORAGE TANKS	2,600	2,600
MINOT AFB		
REPAIR RUNWAY/TAXIWAY	---	8,500
UNDERGROUND FUEL STORAGE TANKS	2,000	2,000
DEFENSE-WIDE		
GRAND FORKS AIR FORCE BASE		
LIFE SAFETY UPGRADE	860	860
ARMY NATIONAL GUARD		
BISMARCK		
AVIATION C-12 HANGAR	1,297	1,300
CAMP GRAFTON (DEVILS LAKE)		
RANGE, MODIFIED RECORD FIRE	1,038	1,038
HEATING PLANT ADDITION	1,826	1,826
AIR NATIONAL GUARD		
HECTOR FIELD (FARGO)		
UPGRADE STORM DRAINAGE	400	400
TOTAL, NORTH DAKOTA	10,021	31,974
OHIO		
AIR FORCE		
WRIGHT-PATTERSON AFB		
ADD/ALTER ACQUISITION MANAGEMENT COMPLEX, PHASE II	12,850	12,850
ADD TO AVIONICS RESEARCH LAB, PHASE II	5,650	5,650
RENOVATE ELECTRIC SUBSTATIONS	4,450	4,450
SEAL FUEL CONTAINMENT DIKES	1,500	1,500
UNDERGROUND FUEL STORAGE TANKS	3,200	3,200
ACQUISITION MANAGEMENT COMPLEX	---	14,400
FIRE STATION	---	1,230
FIRE PROTECTION SYSTEM	---	1,400
DEFENSE-WIDE		
DEFENSE ELECTRONICS SUPPLY CENTER, DAYTON		
INSTALL GAS-FIRED BOILERS	6,000	---
DEFENSE CONSTRUCTION SUPPLY CENTER, COLUMBUS		
CHILD DEVELOPMENT CENTER	3,100	3,100
ARMY NATIONAL GUARD		
RICKENBACKER AIRPORT		
CONSOLIDATED DINING FACILITY	---	1,250
AIR NATIONAL GUARD		
MANSFIELD LAHM AIRPORT		
MEDICAL TRAINING AND DINING FACILITY	---	2,900
TOLEDO EXPRESS AIRPORT		
ADD/ALTER OPERATIONS AND TRAINING FACILITY	---	1,800
FIRE SUPPRESSION SYSTEMS	---	1,100
TAXIWAY AND ARM/DEARM PADS	---	1,950
ARMY RESERVE		
COLUMBUS		
USARC/OMS/AMSA/DS-GS SHOP	14,701	14,701
AIR FORCE RESERVE		
YOUNGSTOWN MAP		
SHORTFIELD LANDING ZONE	---	6,400
WIDEN AIRCRAFT PARKING APRON	1,450	1,450
TOTAL, OHIO	52,901	79,331

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
OKLAHOMA		
ARMY		
FORT SILL		
CENTRAL VEHICLE WASH FACILITY	---	7,600
ENVIRONMENTAL TRAINING CENTER	---	3,700
WHOLE BARRACKS RENEWAL	15,700	15,700
AIR FORCE		
ALTUS AFB		
C-17 ADD TO AIRCRAFT MAINTENANCE FACILITY - DBOF	3,300	3,300
C-17 ADD TO FLIGHT SIMULATION TRNG FACILITY - DBOF	2,850	2,850
C-17 FIRE STATION - DBOF	780	780
DROP ZONE LAND ACQUISITION	---	780
TINKER AFB		
ALTER HYDRANT FUELING SYSTEM	4,129	4,129
ENGINEERING AND CONTRACT SUPPORT FACILITY	5,900	5,900
INDUSTRIAL WASTEWATER REGIONAL CONNECTION - DBOF	5,400	5,400
MILSTAR COMMUNICATIONS GROUND TERMINAL	800	---
SEAL FUEL CONTAINMENT DIKES	620	620
UNDERGROUND FUEL STORAGE TANKS	4,700	4,700
VANCE AFB		
AIRFIELD PAVEMENTS, PHASE IV	---	5,000
T-1 SPECIALIZED UPT MAINTENANCE SUPPORT	2,700	2,700
UPGRADE AIRFIELD LIGHTING	3,300	3,300
ARMY NATIONAL GUARD		
FREDERICK		
ARMORY	---	1,200
AIR NATIONAL GUARD		
TULSA IAP		
ADD/ALTER FIRE STATION	460	460
WILL ROGERS WORLD AIRPORT (OKLAHOMA CITY)		
COMPOSITE SUPPORT FACILITY	3,900	3,900
MOBILITY EQUIPMENT STORAGE WAREHOUSE	950	950
TOTAL, OKLAHOMA	55,489	72,969
OREGON		
ARMY NATIONAL GUARD		
CAMP WITHYCOMBE		
SUPPORT MAINTENANCE SHOP	---	7,569
PENDLETON		
AVIATION SUPPORT FACILITY	---	3,515
AIR NATIONAL GUARD		
PORTLAND IAP		
ADD/ALTER FIRE STATION	500	500
DRAINAGE IMPROVEMENTS	600	950
KINGSLEY FIELD/KLAMATH FALLS		
REPAIR RUNWAY/TAXIWAY	---	8,500
TOTAL, OREGON	1,100	21,034
PENNSYLVANIA		
ARMY		
TOBYHANNA ARMY DEPOT		
WATER POLLUTION ABATEMENT	750	750
NAVY		
PHILADELPHIA NAV INACTIVE SHIP MAINT FAC		
BERTHING WHARF IMPROVEMENTS, PHASE II	8,660	8,660
PHILADELPHIA NAVY AVIATION SUPPLY OFFICE		
ELECTRICAL DISTRIB SYSTEM UPGRADE - DBOF	1,900	1,900
PHILADELPHIA NAVAL SHIPYARD		
ASBESTOS REMOVAL FACILITY	---	2,300
POWER PLANT MODERNIZATION	---	11,500

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
DEFENSE-WIDE		
OLMSTEAD FIELD, HARRISBURG IAP		
SOF AVIONICS/ECM POD FACILITY	1,300	1,300
ARMY NATIONAL GUARD		
FORT INDIANTOWN GAP		
STATE MILITARY FACILITY	---	9,200
JOHNSTOWN		
ADDITION TO JOINT ARMED FORCES AVIATION FACILITY	---	5,004
ARMORY EXPANSION	---	3,309
AIR NATIONAL GUARD		
FT INDIANTOWN GAP ANG COMMUNICATIONS SITE (LICKDALE)		
CIVIL ENGINEERING MAINTENANCE SHOPS	850	850
STATE COLLEGE		
COMMUNICATIONS ELECTRONICS TRAINING COMPLEX	---	9,700
AIR FORCE RESERVE		
GREATER PITTSBURGH IAP		
BASE CIVIL ENGINEERING COMPLEX	---	3,100
JET FUEL STORAGE COMPLEX	4,300	4,300
OFF BASE FIRING RANGE	1,300	1,300
TOTAL, PENNSYLVANIA	19,060	63,173
RHODE ISLAND		
NAVY		
NEWPORT NAVAL EDUCATION AND TRAINING CENTER		
BACHELOR ENLISTED QUARTERS	7,500	7,500
ELECTRICAL DISTRIBUTION SYSTEM UPGRADE, PHASE II	3,800	3,800
DEFENSE-WIDE		
NEWPORT NAVAL EDUCATION AND TRAINING CENTER		
MEDICAL CLINIC, PHASE II	---	4,000
AIR NATIONAL GUARD		
COVENTRY AGS		
REPLACE UNDERGROUND FUEL STORAGE TANKS	840	840
NORTH SMITHFIELD ANGS (SLATERSVILLE)		
REPLACE UNDERGROUND FUEL STORAGE TANKS	550	550
QUONSET STATE AIRPORT (WARWICK)		
BASE ENGINEER MAINTENANCE FACILITY	2,750	2,750
REPLACE UNDERGROUND FUEL STORAGE TANKS	890	890
NAVY RESERVE		
NETC NEWPORT		
CONSTRUCTION BATTALION UNIT ADDITION	500	500
TOTAL, RHODE ISLAND	16,830	20,830
SOUTH CAROLINA		
ARMY		
FORT JACKSON		
OPERATIONS FACILITY	1,100	1,100
RANGE UPGRADE	1,600	1,600
NAVY		
BEAUFORT MARINE CORPS AIR STATION		
BACHELOR ENLISTED QUARTERS, PHASE II	8,390	8,390
JET FUEL DELIVERY SYSTEM IMPROVEMENT	2,510	2,510
CHARLESTON NAVAL WEAPONS STATION		
FIRE PROTECTION PIPELINE - DBOF	580	580
AIR FORCE		
CHARLESTON AFB		
FIRE TRAINING FACILITY - DBOF	1,100	1,100
SHAW AFB		
CHILD DEVELOPMENT CENTER	2,650	2,650
CONTROL TOWER	2,700	2,700
UNDERGROUND FUEL STORAGE TANKS	520	520

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
ARMY NATIONAL GUARD		
COLUMBIA		
COMBINED SUPPORT/MAINTENANCE SHOP	---	8,616
LAND ACQUISITION	---	950
LEESBURG		
WASH RACK/FUEL FACILITY	---	1,009
SUMMERVILLE		
OMS	---	834
AIR NATIONAL GUARD		
MCENTIRE ANGB (EASTOVER)		
REPLACE UNDERGROUND FUEL STORAGE TANKS	1,750	1,750
UPGRADE AIRFIELD LIGHTING AND PAVEMENT	4,200	4,200
ARMY RESERVE		
FORT JACKSON		
USARC/OMS/DS SHOP	10,428	10,428
TOTAL, SOUTH CAROLINA	37,528	48,937
SOUTH DAKOTA		
AIR FORCE		
ELLSWORTH AFB		
CONSOLIDATED ADMIN CENTER, PHASE I	---	6,200
ALTER AIRCRAFT MAINTENANCE DOCK	630	630
DEFENSE-WIDE		
ELLSWORTH AIR FORCE BASE		
LIFE SAFETY UPGRADE	1,400	1,400
ARMY NATIONAL GUARD		
SIOUX FALLS (JOE FOSS FIELD)		
ARMORY ADDITION	---	3,700
MAINTENANCE SHOP	---	1,700
AIR NATIONAL GUARD		
JOE FOSS FIELD (SIOUX FALLS)		
ADD/ALTER FUEL SYSTEMS MAINTENANCE/CORROSION DOCK	1,700	1,700
ALTER COMPOSITE OPERATIONS AND TRAINING FACILITY	350	350
TOTAL, SOUTH DAKOTA	4,080	15,680
TENNESSEE		
NAVY		
MEMPHIS NAVAL AIR STATION		
FIRE ALARM SYSTEM IMPROVEMENTS	1,100	1,100
FUELS TRAINER FACILITY	600	---
POTABLE WATER SYSTEM IMPROVEMENTS	350	350
AIR FORCE		
ARNOLD ENGINEERING DEV CENTER		
UPGRADE SEWAGE TREATMENT PLANT	1,500	1,500
MEMPHIS NAVAL AIR STATION		
ADD/ALTER HIGH-BAY TECHNICAL TRAINING FACILITY	3,000	---
ALTER TECHNICAL TRAINING FACILITY	2,000	---
RENOVATE DORMITORY	1,200	---
DEFENSE-WIDE		
MILLINGTON NAVAL AIR STATION		
HOSPITAL LIFE SAFETY/SEISMIC UPGRADE, PHASE II	5,000	5,000
ARMY NATIONAL GUARD		
CAMDEN		
ARMORY ADDITION	---	714
ELIZABETHTON		
ARMORY STORAGE ADDITION	---	100
JEFFERSON CITY		
ARMORY	---	952
MILAN		
ARMORY	---	1,357

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
SEVIERVILLE		
ARMORY	---	1,352
SMYRNA		
ARMORY	---	3,934
WAREHOUSE	---	710
TIPTONVILLE		
ARMORY	---	1,157
WAVERLY		
ARMORY ADDITION	---	587
AIR NATIONAL GUARD		
ALCOA AIR NATIONAL GUARD STATION		
ADD/ALTER COMMUNICATIONS ELECTRONICS TRNG FACILITY	1,300	1,300
MCGHEE-TYSON AIRPORT (ALCOA)		
PMEC ADMINISTRATIVE SUPPORT FACILITY	2,200	2,200
REPLACE UNDERGROUND FUEL STORAGE TANKS	1,100	1,100
NASHVILLE MAP		
REPLACE UNDERGROUND FUEL STORAGE TANKS	1,000	1,000
NAVY RESERVE		
NMCRC CHATTANOOGA		
RESERVE CENTER REPLACEMENT	3,690	3,690
TOTAL, TENNESSEE	24,040	28,103
TEXAS		
ARMY		
FORT BLISS		
CONSOLIDATED MAINTENANCE FACILITY	14,000	14,000
TACTICAL EQUIPMENT SHOP	---	12,800
TACTICAL EQUIPMENT SHOP	---	2,800
FORT HOOD		
BATTALION COMMAND AND CONTROL BUILDING	---	5,600
CLOSE COMBAT TACTICAL TRAINER FACILITY	7,500	7,500
COLD/DRY STORAGE FACILITY	13,400	13,400
DEPLOYMENT STORAGE FACILITY	---	1,500
TACTICAL EQUIPMENT SHOP	5,300	5,300
TEST AND EVALUATION SUPPORT FACILITY	5,200	5,200
WHOLE BARRACKS RENEWAL	18,000	18,000
FORT SAM HOUSTON		
FIRE STATION	---	1,300
MULTI-PURPOSE FAMILY SERVICE CENTER	4,351	4,351
NAVY		
CORPUS CHRISTI NAVAL AIR STATION		
BACHELOR ENLISTED QUARTERS IMPROVEMENTS	1,670	1,670
AIR FORCE		
BROOKS AFB		
CENTER FOR ENVIRONMENTAL EXCELLENCE	---	8,400
DYESS AFB		
ADD/ALTER DORMITORIES	---	5,200
UPGRADE HYDRANT FUELING SYSTEM, PHASE II	9,500	9,500
WEAPONS STORAGE AREA SECURITY	890	890
GOODFELLOW AFB		
BASE CIVIL ENGINEERING COMPLEX	3,700	3,700
KELLY AFB		
ADD/ALTER DORMITORIES - DBOF	2,000	2,000
ALTER WEAPON SYSTEM SUPPORT CTR, PHASE II - DBOF	7,800	7,800
C-17 ADD/ALTER NDI FACILITY - DBOF	4,900	4,900
C-17 ALTER DEPOT AVIONICS FACILITY - DBOF	731	731
C-17 ENGINEERING TEST LABORATORY	2,600	2,600
UPGRADE SANITARY SEWER MAINS	3,000	3,000
UPGRADE STORM DRAINAGE SYSTEM, PHASE I	2,900	2,900
UPGRADE TAXIWAY	3,550	3,550

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
LACKLAND AFB		
ALTER BASE SUPPORT FACILITY	5,400	5,400
BASE CONTRACTING CENTER	2,450	2,450
MISSION SUPPORT CENTER	7,543	7,543
TRAINING SERVICES FACILITIES	5,800	5,800
DORMITORY	8,900	8,900
LACKLAND TRAINING ANNEX		
VEHICLE MAINTENANCE FACILITY	1,200	---
LAUGHLIN AFB		
FIRE STATION	2,400	2,400
UPGRADE AIRFIELD LIGHTING	3,000	3,000
UPGRADE AIRFIELD PAVEMENT	3,250	3,250
RANDOLPH AFB		
CONTROL TOWER	2,800	2,800
UPGRADE ELECTRICAL DISTRIBUTION SYSTEM	2,500	2,500
REESE AFB		
UNDERGROUND FUEL STORAGE TANKS	900	900
SHEPPARD AFB		
ADD/ALTER CHILD DEVELOPMENT CENTER	780	780
ENJJPT ALTER FLIGHT TRAINING FACILITY	2,200	2,200
FIRE TRAINING FACILITY	850	850
DORMITORY	14,200	14,200
DEFENSE-WIDE		
FORT SAM HOUSTON		
COMBAT MEDIC TRAINING COMPLEX	1,400	1,400
HOSPITAL REPLACEMENT, PHASE VII	75,000	50,000
NCO ACADEMY-AMEDD CENTER AND SCHOOL	3,400	3,400
ARMY NATIONAL GUARD		
CORPUS CHRISTI		
ADD/ALTER ARMORY	---	2,719
ORGANIZATIONAL MAINTENANCE SHOP	---	991
LUBBOCK		
ORGANIZATIONAL MAINTENANCE SHOPS & AFRC, PHASE II.	---	1,726
WESLACO		
ARMORY AND ORGANIZATIONAL MAINTENANCE SHOP	---	5,567
AIR NATIONAL GUARD		
ELLINGTON FIELD (HOUSTON)		
REPLACE UNDERGROUND FUEL STORAGE TANKS	1,600	1,600
KELLY AFB (SAN ANTONIO)		
BASE SUPPLY WAREHOUSE	---	4,300
REPLACE UNDERGROUND FUEL STORAGE TANKS	560	560
AIR FORCE RESERVE		
KELLY AFB		
RED HORSE STRUCTURAL/UTILITY FACILITY	2,300	2,300
TOTAL, TEXAS	259,425	286,128
UTAH		
ARMY		
DUGWAY PROVING GROUND		
LIFE SCIENCES TEST FACILITY	16,500	16,500
TOOELE ARMY DEPOT		
TREATY COMPLIANCE FACILITY	1,500	1,500
AIR FORCE		
HILL AFB		
FIRE TRAINING FACILITY - DBOF	880	880
UPGRADE INDUSTRIAL WASTEWATER COLLECTION SYSTEM	---	6,200
UPGRADE INDUSTRIAL WASTEWATER TRTMNT PLANT - DBOF.	5,100	5,100
UPGRADE WATER DISTRIBUTION SYSTEM	2,400	2,400
DEFENSE-WIDE		
DEFENSE REUTILIZATION AND MKTG OFC HILL AFB		
FIRE PROTECTION AND OPEN STORAGE	1,700	1,700

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
ARMY NATIONAL GUARD		
CAMP WILLIAMS		
RANGE, INFANTRY SQUAD BATTLE COURSE	1,066	1,066
RANGE, MOUT ASSAULT COURSE	850	850
AIR NATIONAL GUARD		
SALT LAKE CITY IAP		
ADD/ALTER COMMUNICATION AND ELECTRONICS FACILITY	850	850
ALTER COMPOSITE SUPPORT FACILITY	950	950
SITE RESTORATION	2,000	2,000
TOTAL, UTAH	33,796	39,996
VERMONT		
ARMY NATIONAL GUARD		
CAMP JOHNSON		
ORGANIZATIONAL MAINTENANCE SHOP	1,002	1,002
JERICHO		
TRAINING SITE SUPPORT FACILITY	304	304
TRAINING FACILITY	---	3,200
AIR NATIONAL GUARD		
BURLINGTON IAP		
FIRE STATION	1,500	1,500
TOTAL, VERMONT	2,806	6,006
VIRGINIA		
ARMY		
FORT BELVOIR		
ELEMENTARY SCHOOL	---	8,000
OPERATIONS FACILITY	860	860
FORT LEE		
APPLIED INSTRUCTION FACILITY	12,600	12,600
WHOLE BARRACKS RENEWAL	20,000	20,000
FORT MYER		
WHOLE BARRACKS RENEWAL	6,800	6,800
NAVY		
CHESAPEAKE MARINE CORPS SEC FORCE BATTN NW		
ACADEMIC INSTRUCTION BUILDING	2,320	2,320
INDOOR RANGE COMPLEX	3,060	3,060
CRANEY ISLAND FLT AND INDUS SUPPLY CTR ANNEX		
WASTEWATER TREATMENT PLANT MODS - DBOF	11,740	11,740
NORFOLK CDR OPERATIONAL TEST AND EVAL FORCE		
OPERATIONS TEST AND EVALUATION MANAGEMENT CENTER	8,100	8,100
NORFOLK NAVAL AIR STATION		
BACHELOR ENLISTED QUARTERS	12,270	12,270
NORFOLK NAVAL AVIATION DEPOT		
AIRCRAFT REWORK FACILITY - DBOF	17,800	---
NORFOLK NAVY PUBLIC WORKS CENTER		
TRASH RECYCLE FACILITY ADDITION - DBOF	5,330	5,330
OCEANA NAS		
REPLACE FUEL TANK FARM	---	1,800
PORTSMOUTH NORFOLK NAVAL SHIPYARD		
BACHELOR ENLISTED QUARTERS	13,420	13,420
QUANTICO MARINE CORPS COMBAT DEV COMMAND		
ANTI-ARMOR TRACKING AND LIVE FIRE RANGE	3,600	3,600
REHAB INSTRUCTIONAL SPACE	---	5,000
CHILD DEVELOPMENT CENTER	3,850	3,850
WALLOPS IS NAVAL SURFACE WEAPONS CTR DET		
SHIP SELF-DEFENSE ENGINEERING FACILITY	10,170	10,170

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
AIR FORCE		
LANGLEY AFB		
ADD/ALTER OPERATIONS FACILITY	5,373	---
BASE CIVIL ENGINEERING COMPLEX, PHASE I	4,000	5,300
FIRE STATION	3,850	3,850
RESTORE KING STREET BRIDGE	4,100	4,100
UNDERGROUND FUEL STORAGE TANKS	500	500
DEFENSE-WIDE		
FORT BELVOIR		
ADMINISTRATIVE BUILDING	5,200	5,200
DEFENSE GENERAL SUPPLY CENTER		
ALTER HAZARDOUS MATERIAL WAREHOUSE	2,900	2,900
HAZARDOUS MATERIAL PROCESSING FACILITY	4,600	4,600
SHEDS FOR OIL STORAGE	9,500	9,500
FORT EUSTIS		
LIFE SAFETY UPGRADE	3,650	3,650
NAVAL AMPHIBIOUS BASE, LITTLE CREEK		
SOF SPECBOATRON PATROL COASTAL SUPPORT	7,500	7,500
PORTSMOUTH NAVAL HOSPITAL		
HOSPITAL REPLACEMENT, PHASE V	211,900	20,000
QUANTICO MARINE CORPS COMBAT DEV COMMAND		
QUANTICO HIGH SCHOOL ADDITION	422	422
AIR NATIONAL GUARD		
CAMP PENDLETON ANGB (VIRGINIA BEACH)		
BASE CIVIL ENGINEER MAINTENANCE/STORAGE FACILITY	1,150	1,150
RICHARD E BYRD IAP (SANDSTON)		
ADD/ALTER FUEL SYSTEMS MAINTENANCE DOCK	1,300	1,300
REPLACE UNDERGROUND FUEL STORAGE TANKS	1,100	1,100
NAVY RESERVE		
MCRC DAM NECK (CAMP PENDLETON)		
ELECTRONICS MAINTENANCE SHOP	1,000	1,000
TOTAL, VIRGINIA	399,965	200,992
WASHINGTON		
ARMY		
FORT LEWIS		
INCINERATOR BUILDING COMPLETION	14,200	14,200
NAVY		
BANGOR NAVAL SUBMARINE BASE		
MESS HALL ADDITION	1,720	1,720
OILY WASTE TREATMENT FACILITY	1,380	1,380
EVERETT NAVAL STATION		
BREAKWATER	22,200	22,200
STEAM PLANT	11,800	11,800
KEYPORT NAVAL UNDERSEA WARFARE CENTER DIV		
HAZARDOUS WASTE STORAGE FACILITY - DBOF	8,980	8,980
AIR FORCE		
FAIRCHILD AFB		
INTELLIGENCE TECHNICAL TRAINING FACILITY	3,500	3,500
MCCHORD AFB		
ADD/ALTER DORMITORIES - DBOF	6,500	6,500
CHILD DEVELOPMENT CENTER COMPLEX - DBOF	4,400	4,400
DEFENSE-WIDE		
FAIRCHILD AIR FORCE BASE		
UTILITY/LIFE SAFETY UPGRADE	8,250	8,250
ARMY NATIONAL GUARD		
YAKIMA TRAINING CENTER (YAKIMA)		
RANGE, MACHINE GUN MODIFICATION	1,527	1,527

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
AIR NATIONAL GUARD		
BELLINGHAM MUNICIPAL AIRPORT ANG		
REPLACE UNDERGROUND FUEL STORAGE TANKS............	420	420
CAMP MURRAY ANGS (TACOMA)		
REPLACE UNDERGROUND FUEL STORAGE TANKS............	380	380
FOUR LAKES COMMUNICATIONS STATION (CHENEY)		
REPLACE UNDERGROUND FUEL STORAGE TANKS............	360	360
PAINE FIELD ANG STATION (EVERETT)		
REPLACE UNDERGROUND FUEL STORAGE TANKS............	320	320
SEATTLE AIR NATIONAL GUARD BASE		
REPLACE UNDERGROUND FUEL STORAGE TANKS............	320	320
ARMY RESERVE		
FORT LEWIS		
USARC/OMS/AMSA/ECS/WAREHOUSE......................	14,703	14,703
NAVY RESERVE		
JOINT TRAINING CENTER EVERETT		
RESERVE CENTER REPLACEMENT........................	2,550	2,550
BANGOR		
RESERVE CENTER....................................	---	3,000
TOTAL, WASHINGTON.................................	103,510	106,510
WEST VIRGINIA		
AIR NATIONAL GUARD		
E WV REGIONAL APT (MARTINSBURG)		
ADD TO AERIAL PORT TRAINING FACILITY..............	390	390
YEAGER AIRPORT (CHARLESTON)		
REPLACE UNDERGROUND FUEL STORAGE TANKS............	370	370
TOTAL, WEST VIRGINIA..............................	760	760
WISCONSIN		
ARMY NATIONAL GUARD		
CAMP WILLIAMS		
COMBINED MAINTENANCE FACILITY.....................	---	11,900
AIR NATIONAL GUARD		
BILLY MITCHELL FIELD (MILWAUKEE)		
REPLACE UNDERGROUND FUEL STORAGE TANKS............	600	600
TRUAX FIELD (MADISON)		
FIRE STATION......................................	1,400	1,400
VOLK FIELD (CAMP DOUGLAS)		
REPLACE UNDERGROUND FUEL STORAGE TANKS............	510	510
NAVY RESERVE		
NMCRC GREEN BAY		
RESERVE CENTER ADDITION...........................	650	650
AIR FORCE RESERVE		
BILLY MITCHELL FIELD		
ADD FIRE PROTECTION TO AIRCRAFT HANGARS...........	1,500	1,500
UPGRADE BASE FUELS COMPLEX........................	1,800	1,800
TOTAL, WISCONSIN..................................	6,460	18,360
WYOMING		
AIR FORCE		
F E WARREN AFB		
REMOTE MISSILE CREW FACILITIES....................	3,800	3,800
RENOVATE SECURITY POLICE OPERATIONS...............	6,000	6,000
UNDERGROUND FUEL STORAGE TANKS....................	2,200	2,200
WEAPONS STORAGE AREA SECURITY.....................	640	640

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
ARMY NATIONAL GUARD		
CAMP GUERNSEY		
BARRACKS RENOVATION	---	3,338
TOTAL, WYOMING	12,640	15,978
CONUS CLASSIFIED		
ARMY		
CLASSIFIED LOCATIONS		
CLASSIFIED PROJECTS	3,000	1,852
AIR FORCE		
CLASSIFIED LOCATION		
OMEGA FACILITIES	2,600	2,600
SPECIAL TACTICAL UNIT DETACHMENT FACILITY	5,540	5,540
DEFENSE-WIDE		
CLASSIFIED LOCATION		
SITE IMPROVEMENTS	5,600	5,600
TOTAL, CONUS CLASSIFIED	16,740	15,592
CONUS VARIOUS		
NAVY		
CONUS VARIOUS		
WASTEWATER COLLECTION & TREATMENT SYSTEM	3,260	3,260
ANTIGUA		
AIR FORCE		
ANTIGUA ISLAND		
SLFI-UPGRADE BACKUP GENERATOR	1,000	1,000
ASCENSION ISLAND		
AIR FORCE		
ASCENSION ISLAND		
SLFI-WASTEWATER TREATMENT PLANT	3,400	3,400
DIEGO GARCIA		
AIR FORCE		
DIEGO GARCIA		
GPS INSTRUMENTATION FACILITY	1,700	1,700
SATELLITE TRACKING STORAGE FACILITY	560	560
DEFENSE-WIDE		
DIEGO GARCIA		
FUEL TANKAGE	9,558	9,558
TOTAL, DIEGO GARCIA	11,818	11,818
GERMANY		
AIR FORCE		
RAMSTEIN AB		
CHILD DEVELOPMENT CENTER	3,100	3,100
GREENLAND		
AIR FORCE		
THULE AB		
WASTEWATER TREATMENT PLANT	5,492	5,492
TOTAL, GREENLAND	5,492	5,492

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
GUAM		
NAVY		
ANDERSON AIR FORCE BASE NAVAL AIR FACILITY		
BACHELOR ENLISTED QUARTERS RENOVATION	3,560	3,560
BACHELOR OFFICER QUARTERS MODERNIZATION	3,750	3,750
FLEET AND INDUSTRIAL SUPPLY CENTER		
GAS BOTTLE STORAGE FACILITY - DBOF	1,240	---
INTEGRATED STORAGE HANDLING FACILITY - DBOF	21,200	21,200
MILITARY SEALIFT COMMAND OFFICE		
MILITARY SEALIFT COMMAND OPERATIONS BLDG	2,170	---
NAVAL HOSPITAL		
CHILD DEVELOPMENT CENTER	2,460	2,460
NAVAL MAGAZINE		
INERT STOREHOUSES	3,750	---
NAVAL OCEANOGRAPHY COMMAND CENTER		
OCEANOGRAPHY BUILDING ALTERATIONS	690	---
NAVAL STATION		
CHILD DEVELOPMENT CENTER ADDITION	2,020	2,020
EXPLOSIVE ORDNANCE DISPOSAL OPERATIONS FACILITY	12,500	12,500
NAVY PUBLIC WORKS CENTER		
SEWERAGE TREATMENT PLANT - DBOF	7,230	7,230
TRANSPORTATION PARTS STORAGE FACILITY - DBOF	1,610	---
WATERFRONT UTILITIES - DBOF	11,840	---
AIR FORCE		
ANDERSEN AFB		
UNDERGROUND FUEL STORAGE TANKS	4,100	---
ARMY NATIONAL GUARD		
BARRIGADA		
U.S. PROPERTY/FISCAL OFFICE/WAREHOUSE, PHASE II	---	1,573
AIR NATIONAL GUARD		
ANDERSON AFB		
BASE SUPPLIES AND EQUIPMENT WAREHOUSE	400	400
TOTAL, GUAM	78,520	54,693
ITALY		
NAVY		
NAPLES NAVAL SUPPORT ACTIVITY		
QUALITY OF LIFE FACILITIES, PHASE I	11,740	11,740
SIGONELLA NAVAL AIR STATION		
CHILD DEVELOPMENT CENTER	3,460	3,460
TOTAL, ITALY	15,200	15,200
KWAJALEIN		
ARMY		
KWAJALEIN		
SEWAGE TREATMENT FACILITY	11,200	11,200
UNACCOMPANIED PERSONNEL HOUSING	10,000	10,000
TOTAL, KWAJALEIN	21,200	21,200
OMAN		
AIR FORCE		
THUMRAIT AB		
WAR READINESS MATERIEL COVERED STORAGE FACILITY	1,800	---
PUERTO RICO		
DEFENSE-WIDE		
DEFENSE FUEL SUPPORT POINT ROOSEVELT ROADS		
FUEL TANKAGE	5,800	---

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
AIR NATIONAL GUARD		
PUERTO RICO IAP		
ADD/ALTER F-16 AVIONICS SHOP	320	320
ALTER FUEL SYSTEMS MAINTENANCE FACILITY	750	750
UPGRADE F-16 AIRCRAFT PARKING RAMP SECURITY SYSTEM	2,000	2,000
TOTAL, PUERTO RICO	8,870	3,070
QATAR		
AIR FORCE		
DOHA		
WAR READINESS MATERIEL WAREHOUSE	5,500	---
SPAIN		
NAVY		
ROTA NAVAL STATION		
CHILD DEVELOPMENT CENTER	2,670	2,670
TURKEY		
AIR FORCE		
INCIRLIK AB		
ADD/ALTER DORMITORIES	2,400	2,400
UNITED KINGDOM		
AIR FORCE		
RAF MILDENHALL		
C-130 PHASE MAINTENANCE HANGAR	4,800	4,800
OVERSEAS CLASSIFIED		
ARMY		
OVERSEAS CLASSIFIED		
COMMUNICATIONS MAINTENANCE FACILITY	3,600	---
DEFENSE-WIDE		
OVERSEAS CLASSIFIED		
POWERHOUSE	10,755	10,755
TOTAL, OVERSEAS CLASSIFIED	14,355	10,755
NATO		
NATO INFRASTRUCTURE	240,000	140,000
WORLDWIDE UNSPECIFIED		
ARMY		
UNSPECIFIED WORLDWIDE LOCATIONS		
HOST NATION SUPPORT	25,000	25,000
PLANNING AND DESIGN	84,441	84,441
UNSPECIFIED MINOR CONSTRUCTION	12,000	12,000
NAVY		
UNSPECIFIED WORLDWIDE LOCATIONS		
PLANNING AND DESIGN	64,373	64,373
UNSPECIFIED MINOR CONSTRUCTION	5,500	5,500
AIR FORCE		
UNSPECIFIED WORLDWIDE LOCATIONS		
GENERAL REDUCTION	---	-6,700
PLANNING AND DESIGN	63,180	63,882
UNSPECIFIED MINOR CONSTRUCTION	6,844	6,844
DEFENSE-WIDE		
UNSPECIFIED WORLDWIDE LOCATIONS		
CONTINGENCY CONSTRUCTION	12,200	12,200
ENERGY CONSERVATION IMPROVEMENT PROGRAM	50,000	50,000

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
PLANNING AND DESIGN		
SPECIAL OPERATIONS COMMAND	5,700	7,700
STRATEGIC DEFENSE INITIATIVE ORGANIZATION	535	535
DEFENSE LEVEL ACTIVITIES	10,305	10,305
DEFENSE MEDICAL SUPPORT ACTIVITY	25,865	25,865
SUBTOTAL, PLANNING AND DESIGN	42,405	44,405
UNSPECIFIED MINOR CONSTRUCTION		
ON-SITE INSPECTION AGENCY	812	812
SPECIAL OPERATIONS COMMAND	2,922	4,922
STRATEGIC DEFENSE INITIATIVE ORGANIZATION	2,192	2,192
DEFENSE LEVEL ACTIVITIES	2,000	2,000
JOINT CHIEFS OF STAFF	5,975	5,975
DOD DEPENDENT SCHOOLS	4,000	4,000
DEFENSE MEDICAL SUPPORT ACTIVITY	3,757	3,757
SUBTOTAL, UNSPECIFIED MINOR CONSTRUCTION	21,658	23,658
ARMY NATIONAL GUARD		
UNSPECIFIED WORLDWIDE LOCATIONS		
PLANNING AND DESIGN	522	10,271
UNSPECIFIED MINOR CONSTRUCTION	5,000	5,000
AIR NATIONAL GUARD		
UNSPECIFIED WORLDWIDE LOCATIONS		
GENERAL REDUCTION	---	-5,740
PLANNING AND DESIGN	9,900	10,868
UNSPECIFIED MINOR CONSTRUCTION	4,000	4,000
ARMY RESERVE		
UNSPECIFIED WORLDWIDE LOCATIONS		
PLANNING AND DESIGN	4,897	7,004
UNSPECIFIED MINOR CONSTRUCTION	2,100	2,100
NAVY RESERVE		
UNSPECIFIED WORLDWIDE LOCATIONS		
GENERAL REDUCTION	---	-9,140
PLANNING AND DESIGN	1,359	1,815
UNSPECIFIED MINOR CONSTRUCTION	1,042	1,042
AIR FORCE RESERVE		
UNSPECIFIED WORLDWIDE LOCATIONS		
GENERAL REDUCTION	---	-2,780
PLANNING AND DESIGN	3,400	3,989
UNSPECIFIED MINOR CONSTRUCTION	3,904	3,904
TOTAL, WORLDWIDE UNSPECIFIED	423,725	417,936
WORLDWIDE VARIOUS		
ARMY		
VARIOUS LOCATIONS		
RESCISSION, FISCAL YEAR 1992	---	-4,700
RESCISSION, FISCAL YEAR 1993	---	-9,200
NAVY		
LAND ACQUISITION		
LAND ACQUISITION	1,340	1,340
VARIOUS LOCATIONS		
HOST NATION INFRASTRUCTURE SUPPORT	2,960	2,960
RESCISSION, FISCAL YEAR 1990	---	-7,662
RESCISSION, FISCAL YEAR 1991	---	-14,406
RESCISSION, FISCAL YEAR 1992	---	-62,899
RESCISSION, FISCAL YEAR 1993	---	-37,660

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
AIR FORCE		
VARIOUS LOCATIONS		
RESCISSION, FISCAL YEAR 1990	---	-8,315
RESCISSION, FISCAL YEAR 1991	---	-6,550
RESCISSION, FISCAL YEAR 1992	---	-12,980
RESCISSION, FISCAL YEAR 1993	---	-2,250
DEFENSE-WIDE		
VARIOUS LOCATIONS		
RESCISSION, FISCAL YEAR 1992	---	-15,500
ARMY NATIONAL GUARD		
UNSPECIFIED LOCATIONS		
INDOOR RANGE MODERNIZATION	637	637
VARIOUS LOCATIONS		
ARMORY UNIT STORAGE BUILDINGS	750	750
TOTAL, WORLDWIDE VARIOUS	5,687	-176,435
FAMILY HOUSING, ARMY		
CALIFORNIA		
FORT IRWIN (220 UNITS)	25,000	25,000
HAWAII		
SCHOFIELD BARRACKS (260 UNITS)	39,000	39,000
SCHOFIELD BARRACKS (88 UNITS)	13,000	13,000
MARYLAND		
FORT MEADE (275 UNITS)	26,000	26,000
NEVADA		
HAWTHORNE AAP		
DEMOLISH ABANDONED HOUSING UNITS	---	500
NEW YORK		
U.S. MILITARY ACADEMY (100 UNITS)	15,000	15,000
NORTH CAROLINA		
FORT BRAGG (224 UNITS)	18,000	18,000
WISCONSIN		
FORT MCCOY (16 UNITS)	2,950	2,950
CONSTRUCTION IMPROVEMENTS	67,530	77,630
PLANNING	11,805	11,805
SUBTOTAL, CONSTRUCTION	218,285	228,885
OPERATION AND MAINTENANCE		
FURNISHINGS ACCOUNT	41,707	41,707
MANAGEMENT ACCOUNT	81,163	81,163
MISCELLANEOUS ACCOUNT	1,840	1,840
SERVICES ACCOUNT	62,447	62,447
UTILITIES ACCOUNT	281,348	281,348
LEASING	268,139	268,139
MAINTENANCE OF REAL PROPERTY	388,528	388,528
INTEREST PAYMENTS	17	17
GENERAL REDUCTION	---	-56,000
SUBTOTAL, OPERATION AND MAINTENANCE	1,125,189	1,069,189
PLUS APPROPRIATION FOR DEBT REDUCTION	412	412
TOTAL, FAMILY HOUSING, ARMY	1,343,886	1,298,486

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
FAMILY HOUSING, NAVY		
CALIFORNIA		
PUBLIC WORKS CENTER SAN DIEGO (318 UNITS)...........	36,571	36,571
DISTRICT OF COLUMBIA		
PUBLIC WORKS CENTER WASHINGTON DC (188 UNITS).......	21,556	21,556
FLORIDA		
PUBLIC WORKS CENTER PENSACOLA (SELF-HELP CENTER/ WAREHOUSE)..	300	300
GEORGIA		
NAVAL SUBMARINE SUPPORT BASE KINGS BAY (FAMILY HOUSING OFFICE/SELF-HELP CENTER/WAREHOUSE)........	790	790
MAINE		
NAS BRUNSWICK (20 MOBILE HOME SPACES)...............	490	490
VIRGINIA		
NAVAL AIR STATION OCEANA (COMMUNITY CENTER)..........	860	860
NAVAL COMPLEX NORFOLK (392 UNITS)...................	50,674	50,674
WASHINGTON		
NAVAL SUBMARINE BASE BANGOR (290 UNITS)..............	27,438	27,438
NAS WHIDBEY ISLAND (106 UNITS)......................	---	10,000
SCOTLAND		
NAVAL SECURITY GROUP ACTIVITY EDZELL (40 UNITS).....	6,000	---
UNITED KINGDOM		
NAVAL ACTIVITIES LONDON (PURCHASE 81 LEASED UNITS)..	15,470	15,470
VARIOUS LOCATIONS		
RESCISSION, FISCAL YEAR 1990........................	---	-14,100
RESCISSION, FISCAL YEAR 1991........................	---	-25,018
RESCISSION, FISCAL YEAR 1993........................	---	-1,253
CONSTRUCTION IMPROVEMENTS...........................	190,696	183,135
PLANNING..	22,924	22,924
SUBTOTAL, CONSTRUCTION..........................	373,769	329,837
OPERATION AND MAINTENANCE		
FURNISHINGS ACCOUNT................................	36,904	36,904
MANAGEMENT ACCOUNT..................................	87,769	87,769
MISCELLANEOUS ACCOUNT...............................	1,133	1,133
SERVICES ACCOUNT....................................	45,347	45,347
UTILITIES ACCOUNT...................................	194,952	194,952
LEASING...	113,308	113,308
MAINTENANCE OF REAL PROPERTY........................	355,554	355,554
MORTGAGE INSURANCE PREMIUMS.........................	88	88
GENERAL REDUCTION...................................	---	-63,000
SUBTOTAL, OPERATION AND MAINTENANCE.............	835,055	772,055
TOTAL, FAMILY HOUSING, NAVY.....................	1,208,824	1,101,892
FAMILY HOUSING, AIR FORCE		
ALABAMA		
MAXWELL AFB (55 UNITS)..............................	4,080	4,080
ARKANSAS		
LITTLE ROCK AFB (HOUSING OFFICE/MAINT FACILITY).....	980	980
CALIFORNIA		
VANDENBERG AFB (166 UNITS)..........................	21,907	21,907
FLORIDA		
PATRICK AFB (155 UNITS).............................	15,388	15,388
TYNDALL AFB (INFRASTRUCTURE FOR FUTURE 450 UNITS)...	5,732	5,732
GEORGIA		
ROBINS AFB (118 UNITS)..............................	7,424	7,424

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
ILLINOIS		
SCOTT AFB		
HOUSING RELOCATION, PHASE II	---	10,000
LOUISIANA		
BARKSDALE AFB (118 UNITS)	8,578	8,578
MASSACHUSETTS		
HANSCOM AFB (48 UNITS)	5,135	5,135
MONTANA		
MALMSTROM AFB (HOUSING OFFICE)	581	581
TEXAS		
DYESS AFB (MAINTENANCE FACILITY)	281	281
LACKLAND AFB (111 UNITS)	8,770	8,770
VIRGINIA		
LANGLEY AFB (HOUSING OFFICE)	452	452
WASHINGTON		
FAIRCHILD AFB (1 UNIT)	184	184
WYOMING		
F E WARREN AFB (104 UNITS)	10,572	10,572
ITALY		
COMISO AB (PURCHASE 460 LEASED UNITS)	20,200	---
VARIOUS LOCATIONS		
RESCISSION, FISCAL YEAR 1992	---	-6,400
RESCISSION, FISCAL YEAR 1993	---	-48,702
CONSTRUCTION IMPROVEMENTS	53,070	75,070
PLANNING	9,901	11,901
SUBTOTAL, CONSTRUCTION	173,235	131,933
OPERATION AND MAINTENANCE		
FURNISHINGS ACCOUNT	43,543	43,543
MANAGEMENT ACCOUNT	44,282	44,282
MISCELLANEOUS ACCOUNT	4,639	4,639
SERVICES ACCOUNT	28,183	28,183
UTILITIES ACCOUNT	211,036	211,036
LEASING	118,266	118,266
MAINTENANCE OF REAL PROPERTY	403,942	403,942
MORTGAGE INSURANCE PREMIUMS	21	21
GENERAL REDUCTION	---	-63,000
SUBTOTAL, OPERATION AND MAINTENANCE	853,912	790,912
TOTAL, FAMILY HOUSING, AIR FORCE	1,027,147	922,845
FAMILY HOUSING, DEFENSE-WIDE		
CONSTRUCTION IMPROVEMENTS	159	159
OPERATION AND MAINTENANCE		
FURNISHINGS ACCOUNT	1,977	1,977
MANAGEMENT ACCOUNT	220	220
MISCELLANEOUS ACCOUNT	26	26
SERVICES ACCOUNT	416	416
UTILITIES ACCOUNT	898	898

MILITARY CONSTRUCTION (IN THOUSANDS OF DOLLARS)

INSTALLATION & PROJECT	BUDGET REQUEST	CONFERENCE AGREEMENT
LEASING	22,882	22,882
MAINTENANCE OF REAL PROPERTY	918	918
GENERAL REDUCTION	---	-1,000
SUBTOTAL, OPERATION AND MAINTENANCE	27,337	26,337
TOTAL, FAMILY HOUSING, DEFENSE AGENCIES	27,496	26,496
HOMEOWNERS ASSISTANCE FUND		
OPERATING EXPENSES	151,400	151,400
BASE REALIGNMENT AND CLOSURE ACCOUNT, PART I		
BASE REALIGNMENT AND CLOSURE ACCOUNT, PART I	27,870	12,830
BASE REALIGNMENT AND CLOSURE ACCOUNT, PART II		
BASE REALIGNMENT AND CLOSURE ACCOUNT, PART II	1,800,500	1,526,310
BASE REALIGNMENT AND CLOSURE ACCOUNT, PART III		
BASE REALIGNMENT AND CLOSURE ACCOUNT, PART III	1,200,000	1,144,000
TOTAL, BASE REALIGNMENT AND CLOSURE ACCOUNTS	3,028,370	2,683,140

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1994 recommended by the Committee of Conference, with comparisons to the fiscal year 1993 amount, the 1994 budget estimates, and the House and Senate bills for 1994 follow:

New budget (obligational) authority, fiscal year 1993	$8,396,345,000
Budget estimates of new (obligational) authority, fiscal year 1994	10,794,341,000
House bill, fiscal year 1994	10,273,731,000
Senate bill, fiscal year 1994	9,753,477,000
Conference agreement, fiscal year 1994	10,065,114,000
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1993	+1,668,769,000
Budget estimates of new (obligational) authority, fiscal year 1994	−729,227,000
House bill, fiscal year 1994	−208,617,000
Senate bill, fiscal year 1994	+311,637,000

W.G. BILL HEFNER,
THOMAS M. FOGLIETTA,
CARRIE P. MEEK,
NORMAN D. DICKS,
JULIAN C. DIXON,
VIC FAZIO,
STENY H. HOYER,
RONALD D. COLEMAN,
WILLIAM H. NATCHER,
BARBARA F. VUCANOVICH,
SONNY CALLAHAN,
HELEN DELICH BENTLEY,
DAVID L. HOBSON,
JOSEPH MCDADE,
Managers on the Part of the House.

JIM SASSER,
DANIEL K. INOUYE,
HARRY REID,
HERB KOHL,
ROBERT C. BYRD,
SLADE GORTON,
TED STEVENS,
MITCH MCCONNELL,
MARK O. HATFIELD,
Managers on the Part of the Senate.

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103D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
103–279

EXTENSION OF NONDISCRIMINATORY TREATMENT WITH RESPECT TO THE PRODUCTS OF ROMANIA

OCTOBER 7, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.J. Res. 228]

[Including cost estimate of the Congressional Budget Office]

The Committee on ways and Means, to whom was referred the joint resolution (H.J. Res. 228) to approve the extension of nondiscriminatory treatment with respect to the products of Romania, having considerod the same, report favorably thereon without amendment and recommend that the joint resolution do pass.

BACKGROUND AND PURPOSE

Romania had most-favored-nation (MFN) status from August 3, 1975, until July 3, 1988, when it was removed by mutual agreement of the two governments. The Romanian Government decided to renounce renewal of MFN treatment subject to the terms of the Jackson-Vanik provisions. Accordingly, the President decided to allow the waiver for Romania to expire at midnight on July 2, 1988, without renewal and issued a proclamation withdrawing MFN treatment and eligibility for U.S. Government credits or guarantees effective on that date.

Following local elections held in Romania in February 1992, the U.S. Department of State issued a statement on March 11 announcing that it had informed the Romanian Government that the United States was prepared to sign a new bilateral trade agreement in light of Romania's progress on reform and its desire for closer bilateral relations. The statement welcomed the progress made by Romania toward a market economy and democratic pluralism, including significant advances in meeting generally accepted international standards for free and fair elections. The state-

79–006

ment also included language indicating that the United States was looking for further improvement in Romania's electoral system as it prepared for national elections scheduled to be held on September 27, 1992.

The "Agreement on Trade Relations Between the Government of the United States of America and the Government of Romania" was signed on April 3, 1992, in Bucharest. This agreement included the grant of reciprocal MFN treatment that is required under Title IV of the 1974 Trade Act.

On June 22, 1992, the Administration transmitted to Congress (1) the Presidential proclamation extending nondiscriminatory treatment to the products of Romania; and (2) the U.S.-Romania Trade Agreement. On the same day, H.J. Res. 512 and S.J. Res. 320, approving MFN treatment for Romanian products, were introduced by the House and Senate Majority and Minority Leaders.

Notwithstanding the existence of these bills, Members of Congress and Administration officials demonstrated cautious restraint in advocating restoration of MFN during the 102nd Congress. Due to concerns over the integrity of Romania's fledgling democracy, the House delayed the vote on the Romania-MFN resolution until after Romania's national elections.

On September 27, 1992, Romania held Parliamentary and Presidential elections. The Presidential elections required a second, runoff round, which took place on October 11, 1992. In the second round Ion Iliescu was elected President with 61 percent of the vote.

Both international observers and the U.S. Department of State declared these elections to be free and fair; however, on September 30, 1992, the House overwhelmingly defeated H.J. Res. 512 (88 yeas to 283 nays). Members who voted against H.J. Res. 512, in explanation of their position, raised the timing of the vote so close to the Romanian elections and human rights issues, including mistreatment of ethnic minorities.

On June 3, 1993, the President recommended to Congress, and the Congress did not object, that his authority to waive the freedom-of-emigration requirements under the Jackson-Vanik amendment be extended for another twelve months, that is, until midnight on July 2, 1994, including for Romania (H. Doc. 103–95).

On July 2, 1993, the Administration once again transmitted to Congress (1) a Presidential proclamation extending nondiscriminatory treatment to the products of Romania; and (2) the "Agreement on Trade Relations Between the Government of the United States of America and the Government of Romania," including exchanges of letters that form an integral part of the Agreement. The Congress formally received these documents (H. Doc. 103–112) on July 13. (Congress was not in session on the date of transmission of the agreement and July 13 was the first day Congress was in session after the date of transmission.)

U.S. exports to Romania totaled about $210.0 million annually between 1985 and 1988, dropped to $155.5 million in 1989, more than doubled to $369.0 million in 1990, dropped again to $209.0 million in 1991, and rose slightly to $248.3 million in 1992. U.S. imports from Romania peaked at $881.0 million in 1985, but declined steadily in subsequent years, particularly since 1988, from $680.6 million to only $69.4 million in 1991. In 1992, imports in-

creased to $87.3 million. Over one-half of the decline in imports since 1989 was accounted for by petroleum products. The volatility in exports and dramatic decline in imports have been due primarily to the Romanian revolution in 1989, which led to increased consumption, reduced production, and a severe hard currency shortage, the collapse of the Soviet economy, as well as the loss of MFN status.

Oilseeds and coal were the largest U.S. export items to Romania in 1992, accounting for $66.6 million, or about 27 percent of total exports. Cotton, meat, machinery, animal feed, and data processing equipment totaling $74.8 million and oil (from petroleum and bituminous materials) and telecommunications equipment totaling $16.4 million were the other leading export items. Oil (from petroleum and bituminous materials) ($30.1 million), footwear ($10.5 million), and apparel ($7.2 million) were the leading imports from Romania last year.

The Committee recognizes, and proponents in the business community point out, that renewal of MFN status will send a strong signal of support for the economic reforms that have been taking place in Romania. Normalized trade relations will provide an improved climate for U.S. export sales to Romania in competition with goods from Western Europe and Asia. The U.S.-Romania bilateral trade agreement will improve the climate for U.S. investors, facilitate business operations in Romania, and lead to strengthened intellectual property right protections. For Romania, lower MFN tariffs should encourage production and export expansion and generate hard currency essential for further reforms toward a more open, market economy.

COMMITTEE ACTION AND COMMENT

H.J. Res. 228 was introduced by Majority Leader Gephardt and Minority Leader Michel by request on July 13, 1993, and referred to the Committee on Ways and Means and its Subcommittee on Trade.

On July 16, the Subcommittee on Trade issued a press release requesting public comments by the close of business August 6 on the resolution and on the U.S.-Romania Trade Agreement. Comments received from business organizations and numerous large and small individual firms strongly support extension of MFN treatment to Romania.

On September 30, the Subcommittee on Trade considered H.J. Res. 228 in markup session and ordered the resolution reported favorably to the full Committee by voice vote.

On October 6, the Committee on Ways and Means considered H.J. Res. 228 in markup session and ordered the resolution favorably reported to the House of Representatives by voice vote.

The Committee notes that similar legislation to approve the extension of nondiscriminatory, or MFN, treatment to the products of Romania was considered by the House of Representatives in October 1992, and at that time, the House rejected that legislation. At the time of the vote, Romania was in the midst of Presidential elections, and a number of Members noted that granting Romania MFN status should be delayed until after these elections. Also, there were a number of questions raised during the House debate

regarding human rights conditions in Romania and, in general, the progress of democratization in that country. Strong views were expressed that Romania needed to make greater progress in these areas before extending MFN status.

The Committee strongly supports extension of MFN status to Romania at this time, recognizing that there have been significant changes since this issue was considered one year ago. Romania is in compliance with the freedom-of-emigration requirements in Title IV of the 1974 Trade Act. Substantial process on democratization and respect for human rights has been made in Romania since the December 1989 revolution, and additional significant improvements have been made since 1992. Romanian political leaders of all parties, including elected representatives of the ethnic minorities, support the extension of MFN status to Romania. The Committee notes with approval the efforts by President Iliescu to disassociate the Romanian government from anti-Semitic and other such attitudes by extremist newspapers and political groups. The Committee also notes the Romanian government's good faith efforts to deal with actions against the Gypsy minority.

The Committee recognizes that the treatment of ethnic minorities and minority problems in Romania are important human rights issues that, unless properly addressed, will continue to pose a threat to stability in Central and Eastern Europe. One key issue will be relations between ethnic Romanians and the ethnic Hungarian minority in Romania. U.S. Government policy has been, and will continue to be, to support the sanctity of existing European borders and to oppose ethnic discrimination of any kind. The Committee welcomes the efforts of the Romanian government to deal with these ethnic issues by devolving the largest possible share of decision-making on them to locally-elected officials.

The transition to democracy in Romania is threatened by economic hardship and the resurgence of aggressive nationalism in Central and Eastern Europe. Extension of MFN treatment to Romania's products and an increase in United States trade with and investment in Romania could be important factors contributing to the development of Romania's private sector and to the sustainability of this country's transition to a market economy.

In recommending strongly that MFN status be granted to Romania, the Committee notes the continuing requirement for an annual waiver under the Jackson-Vanik amendment to the Trade Act of 1974.

ANALYSIS OF RESOLUTION AND PRESENT LAW

Present law

Title IV of the Trade Act of 1974 sets forth the conditions and procedures for the President to grant nondiscriminatory, or MFN, status to the products of any nonmarket economy country not eligible for such treatment as of January 3, 1975 (the date of enactment of that Act). Section 402 (the so-called "Jackson-Vanik amendment"), as amended by the Customs and Trade Act of 1990, sets forth three requirements relating to freedom of emigration which must be met, or waived annually by the President, in order for a nonmarket economy country to become eligible to receive MFN

treatment, as well as to participate in any U.S. Government program extending credits or guarantees. Title IV also requires that a bilateral commercial agreement providing reciprocal MFN status be concluded and remain in force between the United States and the nonmarket economy country; section 405 sets forth the types of provisions that must be included in such an agreement.

Sections 405(c) and 407(c) of the 1974 Trade Act, as amended, provide that a trade agreement with a nonmarket economy country and a Presidential proclamation granting MFN status shall take effect only after enactment of a joint resolution of approval. Such a resolution is subject to the fast-track implementing procedures of the House and Senate. Under these procedures, the Congress must act within a maximum of 90 legislative days upon a joint resolution of approval (60 days in the House, 30 additional days in the Senate on the House-passed revenue measure). The Committee on Ways and Means has 45 legislative days to report the measure, or is subject to automatic discharge from further consideration. The House votes on the resolution within 15 legislative days after the reporting or discharge. The text of the resolution is set forth in the fast-track procedures and is not subject to amendment.

Explanation of resolution and bilateral trade agreement

H.J. Res. 228 states that the Congress approves the extension of nondiscriminatory treatment with respect to the products of Romania transmitted by the President to the Congress on July 2, 1992.

The U.S.-Romania Trade Agreement is virtually identical to the previous bilateral trade agreement signed with the former Soviet Union and includes the elements required under section 405 of the 1974 Act. In addition to mutual extension of nondiscriminatory tariff treatment, the Agreement obligates the Parties to maintain a satisfactory balance of market access opportunities through trade concessions, to permit and facilitate establishment and operation of government commercial offices on a reciprocal basis, and to facilitate business operations. The Agreement contains provisions on financial transactions, permits import relief safeguard actions to deal with any market disruption, and provides for settlement of commercial disputes. Trade in specific sectors, such as textiles and civil aircraft, will continue to be subject to separate agreements.

Romania also undertakes detailed commitments to modernize and upgrade its protections and enforcement of intellectual property rights to a level comparable to industrialized countries, and undertakes best efforts to enact legislation for full implementation by December 31, 1993. Existing U.S. laws and practices regarding intellectual property protection would not be affected by the Agreement. Side letters to the Agreement contain commitments on promotion of tourism and travel-related services.

The Agreement and the Presidential proclamation granting MFN treatment shall take effect only if approved by the Congress within the fast-track timetable and upon the exchange of written notices of acceptance by both governments. The initial term of the Agreement is three years, with automatic extension for subsequent three-year terms unless either Party terminates the Agreement after notice.

MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

Vote of the Committee in reporting the resolution

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the resolution: H.J. Res. 228 was ordered favorably reported by the Committee, by voice vote.

Oversight findings

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives relating to oversight findings, the Committee reports, on the basis of public comments received in favor of H.J. Res. 228 and its review of the terms of the bilateral trade agreement, that granting MFN treatment to the products of Romania will promote economic reforms underway in that country and create trade and investment opportunities for U.S. business.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the resolution.

Budgetary authority and cost estimates, including estimates of the Congressional Budget Office

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that there are no tax expenditures or new budgetary authority providing financial assistance to State and local governments in the resolution.

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the required cost estimate furnished by the Congressional Budget Office on H.J. Res. 228 is herein included.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 4, 1993.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.J. Res. 228, a joint resolution approving the extension of most-favored-nation (MFN) status of Romania, as ordered reported on September 30, 1993, by the Subcommittee on Trade of the House Committee on Ways and Means. CBO estimates that extending MFN status to Romania for one year would result in a $9 million reduction in federal government receipts in fiscal year 1994.

Under Title IV of the Trade Act of 1974, MFN status may not be conferred on a country with a nonmarket economy if that country maintains restrictive emigration policies. However, the President may waive the stipulation on an annual basis if he certifies that granting MFN status would promote freedom of emigration in that country. The President used such a waiver and granted Romania MFN status beginning in 1975 and continued to do so through

1987. In 1988, Romania renounced the renewal of its MFN status; consequently, the President did not exercise his authority to issue a waiver of Title IV, and Romania lost its MFN status.

Because a trade agreement between Romania and the United States is still valid, only two things would be necessary for Romania to receive MFN status: the President must issue the waiver of Title IV, and Congress must pass a joint resolution of approval of the waiver. On June 3, 1993, the President notified Congress of his intention to waive Title IV.

H.J. Res. 228 approves the extension of MFN status of Romania for one year. Granting MFN status would lower tariff rates on imports from Romania. CBO estimates that lowering tariff rates would reduce customs duty revenues below the level projected under current tariff rates. While imports would rise in response to the lower domestic price resulting from the lower tariffs, the negative effect on revenues of the lower rates would outweigh the positive effect on revenues of the greater volume of imports from Romania. In addition, it is likely that some of the increase in U.S. imports from Romania resulting from its MFN status would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Romania will displace imports from other countries. CBO estimates that, net of income and payroll tax offsets, granting Romania MFN status would reduce federal government receipts by $9 million in fiscal year 1994.

H.J. Res. 228 would affect revenues and thus would be subject to pay-as-you-go procedures under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998
Changes in outlays	(1)	(1)	(1)	(1)	(1)
Changes in receipts	−9	0	0	0	0

[1] Not applicable.

This estimate is based on 1993, January through July, Census data on imports from Romania. The increase in imports of goods from Romania resulting from the reduced prices of the imported products in the U.S.—reflecting the lower MFN tariff rates—has been calculated using estimates of the substitution between U.S. products and imports of the same goods.

The calculation assumes that the economy of Romania will function in the next year in a manner similar to that of the recent past. Obviously, major political and economic changes are under way in Romania that could affect its ability to produce and export goods, its need to import goods from the U.S. and other countries, and the exchange rate between its currency and that of the U.S. However, we believe that the assumption of relatively constant economic performance is appropriate for a one-year extension of MFN status. Over a five-year period, the economic outlook is much more uncertain.

If you wish further details, please feel free to contact me or your staff may wish to contact Melissa Sampson at 226–2720.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, an estimate furnished by the Office of Management and Budget (OMB) on H.J. Res. 228 is also included. The Committee notes in particular the statement by OMB that, "Our preliminary estimate of the budgetary effect of granting MFN to Romania is that it will be revenue neutral and would therefore not trigger a sequester when it is enacted."

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, October 5, 1993.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter provides information on the estimates of the budget effects of H.J. Res. 228. This legislation would provide most-favored nation (MFN) treatment for Romania. Our preliminary estimate of the budgetary effect of granting MFN to Romania is that it will be revenue neutral and would therefore not trigger a sequester when it is enacted.

The difference between the OMB estimate and the CBO estimate of a $9 million revenue loss is due to different assumptions regarding U.S. imports from Romania when MFN is restorod. Our estimate is based upon comparison of U.S. imports from Romania in the 1984–86 period when Romania had MFN with imports when MFN was withdrawn. The much higher U.S. imports under MFN lead to our estimate that growth in Romania's exports will offset the revenue effects of lower tariff rates. CBO's estimate, on the other hand, is based on a model that considers overall U.S. import patterns. It does not specifically take into account historical Romanian trade data.

Your favorable consideration of H.J. Res. 228 will be appreciated.

Yours sincerely,

LEON E. PANETTA, *Director.*

Inflationary impact

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.J. Res. 228 is not expected to have any inflationary impact on prices and costs in the operation of the general economy.

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ASIA PACIFIC ECONOMIC COOPERATION ORGANIZATION

OCTOBER 7, 1993.—Referred to the House Calendar and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H. Con. Res. 113 which on June 22, 1993, was referred jointly to the Committee on Foreign Affairs and the Committee on Ways and Means]

The Committee on Ways and Means, to whom was referred the concurrent resolution (H. Con. Res. 113) relating to the Asia Pacific Economic Cooperation organization, having considered the same, report favorably thereon without amendment and recommend that the concurrent resolution be agreed to.

BACKGROUND AND PURPOSE

The Asia Pacific Economic Cooperation (APEC) organization was formed in Canberra, Australia, in 1989, and has just begun to take formal shape. An organization with an unusually broad membership, APEC includes the United States; Canada; New Zealand; Australia; Japan; China, including Taiwan; South Korea; Hong Kong; and the Association of Southeast Asian Nations (ASEAN), which consists of Malaysia, Indonesia, the Philippines, Thailand, Singapore, and Brunei.

APEC's primary objective is to strengthen commercial ties between and among its member economies and to foster liberalization of their trade and investment regimes.

The APEC Secretariat is located in Singapore. The Chair of APEC rotates annually among the member nations. The United States currently holds the Chair and will continue through the end of this year.

APEC Ministers meet annually, while senior APEC officials meet about every three months. In april of this year, senior APEC officials met in Williamsburg, Virginia. and in September, in Honolulu, Hawaii, to discuss the future of the organization. From November 17 through November 19, the United States will host the next APEC ministerial in Seattle, Washington. This meeting will

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be followed by an APEC "leaders" meeting, also in Seattle. One of the purposes of the ministerial will be to vote on an economic agenda that could pave the way for the negotiation of a Trade and Investment Framework Agreement (TIFA) among APEC member countries.

Between 1980 and 1991, the average annual growth in U.S. trade with other APEC countries was greater than the average annual growth of U.S. trade with the European Community (EC) and, more broadly, with the rest of the world. During this period, the average annual growth in U.S. exports to APEC was 8.3 percent, as opposed to 5.2 percent to the EC and 4.3 percent to the rest of the world. Between 1980 and 1991, the average annual growth in U.S. imports from APEC was 10.1 percent compared with 7.6 percent from the EC and 2.9 percent from the rest of the world. In interpreting these numbers, one should keep in mind that the United States' two largest trading partners, Canada and Japan, are APEC members. In 1991, Canada accounted for 36 percent of total U.S. trade with APEC and Japan for 28 percent.

The Clinton Administration has taken a particular interest in APEC. In his American University speech in February, the President expressed a desire to "work with" APEC. Building on this, Winston Lord, the Assistant Secretary of State for East Asian and Pacific Affairs, indicated that APEC ranks highly on the Administration's trade priorities list. Finally, in recent testimony before the Subcommittee on Trade, U.S. Trade Representative Michael Kantor stated that "[t]he Asia Pacific region is collectively America's largest trading partner and the most dynamic region of economic growth in the world." Ambassador Kantor went on to note that the U.S. position in APEC offers us "a great opportunity to strengthen our ties with this critical region."

The Committee notes that the Asia/Pacific is the fastest growing region in the world and therefore offers tremendous trade and commercial opportunity to American business. H. Con. Res. 113, introduced by Mr. McDermott (D., Wash.) raises the visibility of the organization through which the U.S. Government and the American business community can focus their efforts to develop healthy relationships with the markets in this part of the world.

COMMITTEE ACTION

On June 22, Mr. McDermott introduced H. Con. Res. 113 relating to APEC. On the same day, H. Con. Res. 113 was referred to the Committee on Ways and Means and on June 24, to its Subcommittee on Trade.

On September 30, the Subcommittee on Trade considered H. Con. Res. 113 in markup session and ordered it reported favorably to the full Committee by voice vote.

On October 6, the Committee considered H. Con. Res. 113 in markup session and ordered it reported favorably to the House of Representatives by voice vote.

ANALYSIS OF RESOLUTION

H. Con. Res. 113 states that it is the sense of the Congress (1) to encourage U.S. leadership in the APEC organization; and (2) that the President, the Secretary of State, and other representa-

tives of the U.S. Government should take the opportunity presented by the scheduled chairing and hosting by the United States of the ministerial meeting of the organization in Seattle, Washington, on November 17 through November 19, 1993, to reaffirm the United States' commitment to make APEC an effective regional economic organization that reduces formal and informal barriers to increased intra-regional trade through the harmonization of standards, trade, and investment policies.

MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

Vote of the committee in reporting the resolution

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the resolution: H. Con. Res. 113 was ordered favorably reported by the Committee, by voice vote.

OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives relating to oversight findings, the Committee notes that the United States' active participation in and chairing of the APEC organization will encourage American companies to take greater advantage of the tremendous market opportunities offered by the Asia/Pacific region.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the resolution.

BUDGETARY AUTHORITY

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that there are no tax expenditures or new budgetary authority providing financial assistance to State and local governments in the resolution.

INFLATIONARY IMPACT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H. Con. Res. 113 is not expected to have any inflationary impact on prices and costs in the operation of the general economy.

COMMITTEE ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee states that H. Con. Res. 113 will have no effect on public expenditures at no cost to the federal government.

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–281

RED RIVER DESIGNATION ACT OF 1993

OCTOBER 12, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of California, from the Committee on Natural Resources, submitted the following

REPORT

[To accompany H.R. 914]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 914) to amend the Wild and Scenic Rivers Act to designate certain segments of the Red River in Kentucky as components of the national wild and scenic rivers system, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the intreduced bill) are as follows:

Page 2, line 24, strike "The boundary" and all that follows through line 6 on page 3.

Page 3, strike lines 7 through 19.

Page 3, line 20, strike "(C)" and in lieu thereof insert "(B)".

At the end of the bill, add a new section, as follows:

SEC. 4. LIMITATION.

Nothing in this Act, or in the amendment to the Wild and Scenic Rivers Act made by this Act, shall be construed as authorizing any acquisition of any scenic easement that without the consent of such landowner would affect any regular use of relevant lands that was exercised prior to the acquisition of such easement.

79–006

Purpose

H.R. 914[1] would designate two segments of the Red River in Kentucky as components of the National Wild and Scenic Rivers System.

Background and Need

H.R. 914 would affect the gorge of the Red River, located within the Daniel Boone National Forest, in eastern Kentucky. The area provides habitat for rare wildlife populations and supports a warm-water fishery. It is also noted for its impressive array of diverse wildflowers and towering rock formations, natural bridges, and significant Native American cultural sites. The location provides notable opportunities for canoeing, hiking, camping, and other outdoor recreation.

In 1984, the Forest Service found these segments eligible for inclusion in the National Wild and Scenic Rivers and such inclusion was recommended by President Bush in January, 1993.

The Committee adopted amendments deleting provisions that would have specified the boundary for one segment and provisions related to land acquisition. These amendments allow the provisions of the Wild and Scenic Rivers Act and established procedures for implementation of the Act to apply. In addition, the Committee adopted an amendment that adds a new section (section 4) to the bill.

Section-by-Section Analysis

Section 1 would provide a short title, namely "Red River Designation Act of 1993".

Section 2 sets forth findings that the natural, scenic, and recreational qualities of the Red River in Kentucky are unique and irreplaceable resources. It also states that the majority of the river's corridor is within the Red River National Geologic Area which contains unique sedimentary rock formations that should be preserved for public enjoyment.

Section 3 would amend section 3(a) of the Wild and Scenic Rivers Act so as to designate two segments of the Red River as components of the National Wild and Scenic Rivers System to be administered by the Forest Service. The 9.1-mile segment (known as the "Upper Gorge" segment) is classified as a "wild" river and the 10.3-mile (the "Lower Gorge" segment) is classified as a "recreational" river. This section would also authorize appropriation of such sums as may be necessary to implement this designation and management.

Section 4 reiterates the definition of "scenic easement" in section 16(c) of the Wild and Scenic Rivers Act and clarifies that any scenic easement acquired after designation could not interfere with continuation of uses being regularly made of lands within the boundaries prior to the easement's acquisition. Specifically, this section provides that after the two segments of the Red River are designated, the Federal government cannot acquire a scenic easement

[1] H.R. 914 was introduced by Representative Rogers on February 16, 1993.

within the segment boundaries without the consent of the owner of the subservient lands.

LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATION

The Subcommittee on National Parks, Forests and Public Lands held a hearing on H.R. 914 on August 5, 1993. On September 21, 1993 the Subcommittee favorably reported the bill, amended, to the Full Committee. On September 29, 1993, the Committee on Natural Resources adopted amendments and ordered the bill as so amended favorably reported to the House by a voice vote.

OVERSIGHT STATEMENT

The Committee on Natural Resources will have continuing responsibility for oversight of the implementation of H.R. 914 after its enactment. No reports or recommendations were received pursuant to Rule X, clause 2(b)(2).

INFLATIONARY IMPACT; COST; AND BUDGET ACT COMPLIANCE

In the opinion of the Committee, enactment of H.R. 914 will have no inflationary impact on the national economy and will involve only costs that are reasonable in view of the benefits derived. The estimate of the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 1, 1993.

Hon. GEORGE MILLER,
Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 914, the Red River Designation Act of 1993, as ordered reported by the House Committee on Natural Resources on September 29, 1993.

H.R. 914 would add about 19 miles of the Red River in Kentucky to the wild and scenic river system to be managed by the Forest Service. Based on information provided to us by that agency, CBO estimates that enactment of this bill would result in no significant additional costs to the federal government and in no costs to state or local governments. Enactment of the bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 3 OF THE WILD AND SCENIC RIVERS ACT

SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) * * *

* * * * * * *

( )(A) RED RIVER, KENTUCKY.—The 19.4-mile segment of the Red River extending from the Highway 746 Bridge to the School House Branch, to be administered by the Secretary of Agriculture in the following classes:

(i) The 9.1-mile segment known as the "Upper Gorge" from the Highway 746 Bridge to Swift Camp Creek, as a wild river. This segment is identified as having the same boundary as the Kentucky Wild River.

(ii) The 10.3-mile segment known as the "Lower Gorge" from Swift Camp Creek to the School House Branch, as a recreational river.

(B) There are authorized to be appropriated such sums as are necessary to carry out this paragraph.

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–282

MAURICE RIVER WILD AND SCENIC RIVERS ACT

OCTOBER 12, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of California, from the Committee on Natural Resources, submitted the following

REPORT

[To accompany H.R. 2650]

[Including cost estimate of the Congressional Budget Office]]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2650) to designate portions of the Maurice River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers Systems, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment (stated in terms of the page and line number of the introduced bill) is as follows:

Page 5, line 15, strike "(a) IN GENERAL.—".

PURPOSE

H.R. 2650[1] would designate eight specific portions of the Maurice River and its tributaries, in New Jersey, as components of the National Wild and Scenic Rivers System. It also would provide for their management through cooperative agreements between the Secretary of the interior and local units of government.

The bill would authorize planning assistance to local governments; encourage the Secretary to work with local governments toward designation of other segments of the Maurice River and its tributaries; require the Secretary to report on the results of that effort; and maintain the applicability of certain provisions of the Wild and Scenic Rivers Act to certain additional segments of the Maurice River and its tributaries.

[1] H.R. 2650 was introduced by Representative Hughes on July 15, 1993.

79–006

Background and Need

The Maurice River and its tributaries are located in the southern part of the Pine Barrens region of New Jersey and drain into the Delaware Bay.

Public Law 100–33, enacted in 1987, directed the Secretary of the interior (through the National Park Service) to study the possible inclusion of the Maurice, Manumuskin, and Mantico Rivers in the National Wild and Scenic Rivers System. All three tributaries are in Cumberland County, New Jersey. Pursuant to this mandate, the National Park Service first reviewed the relevant physical and biological characteristics and then, in a process involving extensive public participation, considered the suitability of the studied areas for inclusion in the National Wild and Scenic Rivers System. A draft report of the results of the study was published in May, 1992. The report concluded that the Maurice River and three tributaries—the Menantico River, Manumuskin Creek, and Muskee Creek—were eligible for inclusion in the System. These are the river segments covered by H.R. 2650.

Accoridng to the National Park Service study, the area covered by H.R. 2650 functions as critical migration-related habitat for shorebirds, songbirds, waterfowl, raptors, rails and fish, and the study area is locally, regionally, nationally and hemispherically significant.

Section-by-Section Analysis

Section 1 sets forth findings and purposes. Subsection (a) states findings concerning the eligibility of specified segments of the Maurice River and certain tributaries for inclusion in the National Wild and Scenic Rivers System; the relevant areas' natural, cultural, scenic and recreational resources; and the relevant planning undertaken by local governments. Subsection (b) states that the purposes of the bill are to declare the importance of the resource values of the Maurice River and its tributaries: to recognize that there values will continue to be threatened by major development and that local land-use regulations alone cannot adequately balance resource conservation and commercial and industrial development; and to recognize that additional segments of the Maurice River and its tributaries (in addition to those specified in the bill) are eligible for potential future designation as components of the national Wild and Scenic Rivers System.

Section 2 would amend section 3(a) of the Wild and Scenic Rivers Act so as to designate 8 portions of the Maurice River and tributaries, in New Jersey, as components of the National Wild and Scenic Rivers System. The designation are as follows:

About 3.8 miles of the middle segment of the Maurice River, to be managed as a "scenic" river.

About 3.1 miles of the middle segment of the Maurice River, to be managed as a "recreational" river.

About 3.6 miles of the upper segment of the Maurice River, to be managed as a "scenic" river.

About 1.4 miles of the lower segment of Menantico Creek, to be managed as a "recreational" river.

About 6.5 miles of the upper segment of Menantico Creek, to be managed as a "scenic" river.

About 2 miles of the lower segment of the Manumuskin River, to be managed as a "Recreational" river.

About 12.3 miles of the upper segment of the Manumuskin River, to be managed as a "scenic " river.

About 2.7 miles of Muskee Creek, to be managed as a "scenic" river.

Section 3 addresses management of the segments specified in section 2. Subsection 3(a) provides that the Secretary of the Interior shall manage these segments through cooperative agreements with local governments, with publicly-owned lands continuing to be managed by the agency of jurisdiction.

Subsection 3(b) provides that local river management plans and the implementing local zoning ordinances that the Secretary of the Interior, after review, determines meet the protection standards specified in section 6(c) of the Wild and Scenic River Act shall be deemed to constitute "local zoning ordinances" under that section—thus precluding use of condemnation for acquisition of lands. The subsection also provides for periodic future reviews of these plans and compliance therewith, by the Secretary of the Interior, and for reporting to Congress of any deviations which would result in any diminution of any of the values for whose protection a river segment specified in the bill was added to the National Wild and Scenic Rivers System.

Subsection 3(c) would authorize the Secretary of the Interior to provide planning assistance to relevant local governments and to enter into cooperative arrangements with other State and Federal agencies to assure consistency between national and State programs and the Wild and Scenic Rivers Act and applicable river management plans for the designated segments of the Maurice River and its tributaries.

Subsection 3(d) would encourage the Secretary of the Interior to continue to work with local municipalities in seeking agreement concerning and support for designation as components of the National Wild and Scenic Rivers System of segments of the Maurice River and its tributaries found eligible for such designation but not designated by the bill. The subsection provides that for 3 years after enactment of the bill the provisions of the Wild and Scenic Rivers Act applicable to segments included in section 5 of that Act (i.e., segments mandated for study) shall apply to the additional eligible segments. The section further provides for the submission of a report concerning the status of such discussions between the Secretary and local governments within 3 years after enactment of the bill.

Subsection 3(e) would authorize appropriation of such sums as may be necessary in order to carry out the provisions of the bill.

Legislative History and Committee Recommendation

The Subcommittee on National Parks, Forests and Public Lands held a hearing on H.R. 2650 on August 5, 1993. On September 21, 1993, the Subcommittee favorably recommended the bill to the Full Committee without amendment. On September 29, 1993, the Com-

mittee on Natural Resources ordered the bill favorably reported to the House by a voice vote.

OVERSIGHT STATEMENT

The Committee on Natural Resources will have continuing responsibility for oversight of the implementation of H.R. 2650 after its enactment. No reports or recommendations were received pursuant to rule X, clause 2(b)(2).

INFLATIONARY IMPACT; COST; AND BUDGET ACT COMPLIANCE

In the opinion of the Committee, enactment of H.R. 2650 will have no inflationary impact on the national economy and will involve only costs that are reasonable in view of the benefits derived. The estimate of the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 1, 1993.

Hon. GEORGE MILLER,
Chairman, Committee on Natural Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2650, a bill to designate portions of the Maurice River and its tributaries in the state of New Jersey as components of the National Wild and Scenic Rivers Systems, as ordered reported by the House Committee on Natural Resources on September 29, 1993. We estimate that implementation of this bill would cost the federal government less than $500,000 over the next five years. Because enactment of H.R. 2650 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill.

H.R. 2650 would add 8 segments of rivers in New Jersey, totaling about 35 miles, to the wild and scenic river system to be managed by the National Park Service (NPS) through cooperative agreements with local governments in the area. The NPS would be required to review local river management plans, monitor compliance with the plans, and provide planning assistance to the local jurisdictions affected by the bill. The bill also would require that a number of other river segments in New Jersey be managed as wild and scenic rivers while the NPS negotiates with local jurisdictions to have these rivers officially added to the system. The NS would be required to report to the Congress within three years on the progress of these negotiations. The bill would authorize the appropriation of whatever sums are necessary to carry out these activities.

Based on information provided to us by the NPS, CBO estimates that implementation of H.R. 2560 would increase federal costs by no more than $100,000 annually beginning in 1994, primarily for providing planning assistance to the local governments and for monitoring compliance with those plans.

Six local jurisdictions would be required to develop and implement management plans for the new wild and scenic rivers. Because these plans have already been initiated, and because the federal government would be providing financial assistance for these

activities, we do not expect enactment of H.R. 2650 to result in significant additional costs to these local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo.

Sincerely,

ROBERT D. REISCHAUER, *Director*.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 3 OF THE WILD AND SCENIC RIVERS ACT

SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) * * *

* * * * * * *

( ) THE MAURICE RIVER, MIDDLE SEGMENT.—From Route 670 Bridge at Mauricetown to 3.6 miles upstream (at drainage ditch just upstream of Fralinger Farm), approximately 3.8 miles to be administered by the Secretary of the Interior as a scenic river.

( ) THE MAURICE RIVER, MIDDLE SEGMENT.—From the drainage ditch just upstream of Fralinger Farm to one-half mile upstream from the United States Geological Survey Station at Burcham Farm, approximately 3.1 miles, to be administered by the Secretary of the Interior as a recreational river.

( ) THE MAURICE RIVER, UPPER SEGMENT.—From one-half mile upstream from the United States Geological Survey Station at Burcham Farm to the south side of the Millville sewage treatment plant, approximately 3.6 miles, to be administered by the Secretary of the Interior as a scenic river.

( ) THE MENANTICO CREEK, LOWER SEGMENT.—From its confluence with the Maurice River to the Route 55 Bridge, approximately 1.4 miles, to be administered by the Secretary of the Interior as a recreational river.

( ) THE MENANTICO CREEK, UPPER SEGMENT.—From the Route 55 Bridge to the base of the impoundment at Menantico Lake, approximately 6.5 miles, to be administered by the Secretary of the Interior as a scenic river.

( ) MANUMUSKIN RIVER, LOWER SEGMENT.—From its confluence with the Maurice River to a point 2.0 miles upstream, to be administered by the Secretary of the Interior as a recreational river.

( ) MANUMUSKIN RIVER, UPPER SEGMENT.—From a point 2.0 miles upstream from its confluence with the Maurice River to its headwaters near Route 557, aproximately 12.3 miles, to be administered by the Secretary of the Interior as a scenic river.

( ) MUSKEE CREEK, NEW JERSEY.—From its confluence with the Maurice River to the Pennsylvania Seashore Line Railroad Bridge,

approximately 2.7 miles, to be administered by the Secretary of the Interior as a scenic river.

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103D CONGRESS
1st Session } HOUSE OF REPRESENTATIVES { REPT. 103–283
Part 1

MIDDLE EAST PEACE FACILITATION ACT OF 1993

OCTOBER 12, 1993.—Ordered to be printed

Mr. HAMILTON, from the Committee on Foreign Affairs, submitted the following

REPORT

[To accompany S. 1487 which on October 6, 1993, was referred jointly to the Committee on Foreign Affairs and the Committee on Banking, Finance and Urban Affairs]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the Act (S. 1487) entitled the "Middle East Peace Facilitation Act of 1993", having considered the same, report favorably thereon with an amendment and recommend that the Act as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SEC. 1. SHORT TITLE.

This Act may be cited as the "Middle East Peace Facilitation Act of 1993".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Palestine Liberation Organization has recognized the State of Israel's right to exist in peace and security; accepted United Nations Security Council resolutions 242 and 338; committed itself to the peace process and peaceful coexistence with Israel, free from violence and all other acts which endanger peace and stability; and assumed responsibility over all Palestine Liberation Organization elements and personnel in order to assure their compliance, prevent violations, and discipline violators;

(2) Israel has recognized the Palestine Liberation Organization as the representative of the Palestinian people;

(3) Israel and the Palestine Liberation Organization signed a Declaration of Principles on Interim Self-Government Arrangements on September 13, 1993, at the White House;

(4) the United States has resumed a bilateral dialogue with the Palestine Liberation Organization; and

(5) in order to implement the Declaration of Principles on Interim Self-Government Arrangements and facilitate the Middle East peace process, the President has requested flexibility to suspend certain provisions of law pertaining to the Palestine Liberation Organization.

79–006

SEC. 2. AUTHORITY TO SUSPEND CERTAIN PROVISIONS.

(a) IN GENERAL.—Subject to subsection (b), the President may suspend any provision of law specified in subsection (d). Any such suspension shall cease to be effective on January 1, 1994, or such earlier date as the President may specify.

(b) CONDITIONS.—

(1) CONSULTATION.—Before exercising the authority provided in subsection (a), the President shall consult with the relevant congressional committees.

(2) PRESIDENTIAL CERTIFICATION.—The President may exercise the authority provided in subsection (a) only if the President certifies to the relevant congressional committees that—

(A) it is in the national interest of the United States to exercise such authority; and

(B) the Palestine Liberation Organization continues to abide by all the commitments described in paragraph (4).

(3) REQUIREMENT FOR CONTINUING PLO COMPLIANCE.—Any suspension under subsection (a) of a provision of law specified in subsection (d) shall cease to be effective if the President certifies to the relevant congressional committees that the Palestine Liberation Organization has not continued to abide by all the commitments described in paragraph (4).

(4) PLO COMMITMENTS DESCRIBED.—The commitments referred to in paragraphs (2) and (3) are the commitments made by the Palestine Liberation Organization—

(A) in its letter of September 9, 1993, to the Prime Minister of Israel;

(B) in its letter of September 9, 1993, to the Foreign Minister of Norway; and

(C) in, and resulting from the implementation of, the Declaration of Principles on Interim Self-Government Arrangements signed on September 13, 1993.

(c) EXPECTATION OF CONGRESS REGARDING ANY EXTENSION OF PRESIDENTIAL AUTHORITY.—The Congress expects that any extension of the authority provided to the President in subsection (a) will be conditional on the Palestine Liberation Organization—

(1) renouncing the Arab League boycott of Israel;

(2) urging the nations of the Arab League to end the Arab League boycott of Israel; and

(3) cooperating with efforts undertaken by the President of the United States to end the Arab League boycott of Israel.

(d) PROVISIONS THAT MAY BE SUSPENDED.—The provisions that may be suspended under the authority of subsection (a) are the following:

(1) Section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2227) as it applies with respect to the Palestine Liberation Organization or entities associated with it.

(2) Section 114 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C. 287e note) as it applies with respect to the Palestine Liberation Organization or entities associated with it.

(3) Section 1003 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 5202).

(4) Section 37 of the Bretton Woods Agreement Act (22 U.S.C. 286w) as it applies to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund. As used in this paragraph, the term "other official status" does not include membership in the International Monetary Fund.

(e) RELATION TO OTHER AUTHORITIES.—This section supersedes section 578 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Public Law 103–87).

(f) RELEVANT CONGRESSIONAL COMMITTEES DEFINED.—As used in this section, the term "relevant congressional committees" means—

(1) the Committee on Foreign Affairs, the Committee on Banking, Finance and Urban Affairs, and the Committee on Appropriations of the House of Representatives; and

(2) the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

PURPOSE AND BACKGROUND

The agreement between Israeli Prime Minister Rabin and Palestinian Liberation Organization (PLO) Chairman Arafat on Sep-

tember 13, 1993 has the potential to transform the Middle East. The Israeli-PLO statement of principles and agreement on mutual recognition which was signed in Washington on September 13, 1993 marks the beginning of a historic process of reconciliation between Israelis and Palestinians. U.S. stakes in this process are extensive. Success in this process of reconciliation holds the promise of transforming the Middle East from its historic state of conflict and economic deprivation to one of peace and prosperity.

S. 1487, as amended, provides the President with flexibility to respond to the new challenges presented by the Israeli-PLO agreement. This legislation allows the United States to carry out its role as a sponsor and facilitator of the Middle East peace talks. Without the authority to suspend certain provisions of law contained in S. 1487, the Washington-based talks between the Israeli and Palestinian negotiating teams on the details involved in implementing the agreements signed last month will be hampered.

COMMITTEE ACTION

On October 6, 1993, S. 1487, the Middle East Peace Facilitation Act of 1993, was referred to the committee.

On October 7, 1993, the committee met in open session to consider an amendment in the nature of a substitute to S. 1487. On the same day, the committee ordered S. 1487, as amended, favorably reported by voice vote, a quorum being present.

JURISDICTIONAL CONCERNS

S. 1487 was jointly referred to the Committee on Banking, Finance, and Urban Affairs. The correspondence regarding this measure follows:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC, October 6, 1993.

Hon. HENRY B. GONZALEZ,
Chairman, Committee on Banking, Finance, and Urban Affairs, Rayburn House Office Building, Washington, DC.

DEAR HENRY: I write with respect to S. 1487, the Middle East Peace and Facilitation Act of 1993.

As you may know, the Committee on Foreign Affairs intends to report this legislation on Thursday, October 7, 1993 and hopes to bring it before the House as soon as possible. The Committee will be considering a complete substitute to the introduced bill which contains a provision which falls within the jurisdiction of your committee. Section 3(c)(4) specifies that the President may waive, under certain conditions, the policy language contained in the Bretton Woods Agreement Act regarding exclusion of the PLO, associated entities, and its agents from IMF sponsored or organized meetings. I have enclosed a copy of the Committee substitute for your review.

In order to facilitate consideration of this legislation by the full House, I would request that the Committee on Banking, Finance and Urban Affairs forego its consideration of this legislation, without prejudice to the jurisdiction of the Committee.

Thank you for your consideration of this request.

With best regards,
Sincerely,

LEE H. HAMILTON, *Chairman.*

COMMITTEE ON BANKING, FINANCE
AND URBAN AFFAIRS,
Washington, DC, October 11, 1993.

Hon. LEE HAMILTON,
Chairman, Committee on Foreign Affairs, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN HAMILTON: We have received your letter of October 6, 1993 requesting that the Committee on Banking, Finance, and Urban Affairs forego its consideration of S 1487, the Middle East Peace and Facilitation Act of 1993.

Subsection 3(c) of S 1487 authorizes the President to suspend section 37 of the Bretton Woods Agreements Act as it applies to the granting of observer status to the Palestine Liberation Organization at any International Monetary Fund meetings. As you indicated in your letter, the Banking Committee has authorizing jurisdiction over the Bretton Woods Agreements Act. In light of these provisions, the Banking Committee would normally request it receive a sequential referral of this legislation.

In the interests of expediting consideration of S 1487, the Committee on Banking, Finance, and Urban Affairs will not request a sequential referral of S 1487. This action is taken without any prejudice to the Banking Committee's jurisdiction. In addition, the Committee reserves its right to request that Banking Committee Members be named to the conference committee if language which affects the Committee's jurisdiction is subsequently added or if existing language is modified.,

We appreciate the cooperative spirit with which you have worked with the Banking Committee.

We request that a copy of this letter be included in the report to accompany S 1487.

Sincerely,

HENRY B. GONZALEZ,
Chairman, Committee on Banking, Finance, and Urban Affairs.
BARNEY FRANK,
Chairman, Subcommittee on International Development, Finance, Trade, and Monetary Policy.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

Section 1 provides a short title of the "Middle East Peace Facilitation Act of 1993" for purposes of this act.

Section 2—Findings

Section 2 contains congressional findings regarding the PLO's recognition of the state of Israel and its commitment to the process of achieving peace in the Middle East, Israel's recognition of the PLO as the representative of the Palestinian people, the signing of an agreement regarding interim self-government for the Palestinian people, the resumption of a bilateral dialogue between the United States and the PLO, and the President's request for flexibility to suspend various provisions of law in order to continue the peace process.

Section 3—Authority to suspend certain provisions

Section 3(a) allows the president to suspend certain provisions of law until January 1, 1994 or such earlier date as he may specify.

Section 3(b) requires the President, before exercising this authority, to consult with the relevant congressional committees and to certify to Congress that any suspension of law is in the national interest of the United States and that the PLO is continuing to abide by commitments it made in its letter of September 9, 1993, to the Prime Minister of Israel; in its letter of September 9, 1993, to the Foreign Minister of Norway; and in the Declaration of Principles signed on September 13, 1993. The suspensions provided by the act cease to be effective if the President certifies that the PLO has stopped meeting these commitments.

Section 3(c) expresses the expectation of Congress that any extension of the authority to suspend provisions of existing law will be conditioned on the PLO renouncing the Arab League boycott of Israel, urging Arab League nations to end the boycott, and cooperating with efforts undertaken by the President to end the boycott.

Section 3(d) specifies the provisions of law that may be suspended under this act. Those provisions include:

(1) a provision of the Foreign Assistance Act that requires that funds may not be used for the U.S. proportionate share of international organizations' programs for the PLO or projects intended to benefit the PLO or entities associated with it;

(2) a provision of the Department of State Authorization Act, Fiscal Years 1984 and 1985 that requires proportionate withholding of U.S. assessed contributions to the United Nations for programs that benefit the PLO or associated entities;

(3) a provision of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 that prohibits any person from receiving anything of value, expending funds from, or maintaining an office or other facilities within the United States for the PLO, its constituent groups, or its agents; and

(4) a provision of the Bretton Woods Agreement Act that expresses the policy of the United States that the PLO should not be given observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund (IMF) and that requires the President to report if the PLO is granted such status. The committee notes that this section does not allow the President to waive the policy language regarding membership in the IMF.

Section 3(e) specifies that this act supersedes a provision contained in the fiscal year 1994 foreign operations appropriations act that also addresses reducing the U.S. proportionate share of contributions to international organizations for support those organizations provide to the PLO or its associated entities.

Section 3(f) defines relevant congressional committees as the Committees on Foreign Affairs, on Banking, Finance, and Urban Affairs, and on Appropriations of the House and the Committees on Foreign Relations and Appropriations of the Senate for purposes of this act.

REQUIRED REPORTS

Cost estimate

S. 1487, as amended, does not contain any direct authorizations of appropriation of any funds. However, the committee did request a cost estimate from the Congressional Budget Office (CBO). The committee agrees with the CBO estimate.

Inflationary impact

The committee believes that enactment of S. 1487, as amended, will have no effect on inflation.

Statements required by clause 2(l)(3) of House Rule XI

(a) Oversight findings and recommendations

Among the principal oversight activities which contributed to the committee's formulation of this legislation were:

Extensive hearings and review by the full committee as well as the Subcommittee on Europe and the Middle East; and

Ongoing consultations between committee Members and staff and the executive branch.

As a result of these oversight activities, the committee recommends that the House approve S. 1487, as amended.

(b) Budget, credit, and spending authority

S. 1487, as amended, will create no new budget, credit, or spending authority.

(c) Committee on Government Operations summary

No oversight findings and recommendations which related to this legislation have been received from the Committee on Government Operations under clause 4(c)(2) of House Rule X.

(d) Congressional Budget Office cost estimate

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 8, 1993.

Hon. LEE H. HAMILTON,
Chairman, Committee on Foreign Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1487, Middle East Peace Facilitation Act of 1993, as ordered reported by the House Committee on Foreign Affairs on Oc-

tober 7, 1993. The bill would suspend until January 1, 1994, certain statutory restrictions regarding the Palestine Liberation Organization and entities associated with it. CBO estimates that enactment of this legislation would have no significant budgetary impact on federal, state, or local governments.

The bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to this bill.

If you would like further details on this estimate, we will be pleased to provide them. The CBO staff contact is Joseph Whitehill.

Sincerely,

ROBERT D. REISCHAUER, *Director*.

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–284

COURT ARBITRATION AUTHORIZATION ACT OF 1993

OCTOBER 12, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 1102]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1102) to make permanent chapter 44 of title 28, United States Code, relating to arbitration, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Court Arbitration Authorization Act of 1993".

SEC. 2. REMOVAL OF REPEAL.

Section 906 of the Judicial Improvements and Access to Justice Act (28 U.S.C. 651 note), and the item relating to such section in the table of contents contained in section 3 of such Act, are repealed.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 905 of the Judicial Improvements and Access to Justice Act (28 U.S.C. 651 note) is amended—

(1) in the first sentence by striking "for the fiscal year" and all that follows through "4 fiscal years,"; and

(2) in the third sentence by striking ", except that" and all that follows through "this Act".

SEC. 4. ARBITRATION TO BE ORDERED IN ALL DISTRICT COURTS.

(a) AUTHORIZATION OF ARBITRATION.—Section 651(a) of title 28, United States Code, is amended to read as follows:

"(a) AUTHORITY.—Each United States district court shall authorize by local rule the use of arbitration in civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter.".

(b) ACTIONS REFERRED TO ARBITRATION.—Section 652(a) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A) by striking "and section 901(c)" and all that follows through "651" and inserting "a district court"; and

(B) in subparagraph (B) by striking "$100,000" and inserting "$150,000"; and

(2) in paragraph (2) by striking "$100,000" and inserting "$150,000".

(c) CERTIFICATION OF ARBITRATORS.—Section 656(a) of title 28, United States Code, is amended by striking "listed in section 658".

(d) REMOVAL OF LIMITATION.—Section 658 of title 28, United States Code, and the item relating to such section in the table of sections at the beginning of chapter 44 of title 28, United States Code, are repealed.

SEC. 5. CONFORMING AMENDMENT.

Section 901 of the Judicial Improvements and Access to Justice Act (28 U.S.C. 652 note) is amended by striking subsection (c).

EXPLANATION OF AMENDMENT

Inasmuch as H.R. 1102 was reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

SUMMARY AND PURPOSE

In 1988, Congress enacted legislation to authorize the continuation of 10 pilot programs of "mandatory" court-annexed arbitration that were in operation in the Federal Courts, as well as to authorize 10 additional pilot programs that would be "voluntary" (28 U.S.C. §§651–58). This authorization is scheduled to expire on November 19, 1993. H.R. 1102, as amended, repeals this sunset provision and requires that all Federal District Courts make available to their litigants some form of arbitration procedure, either voluntary or mandatory (or both), subject to the restrictions in the existing law. It also increases the maximum amount in controversy for "mandatory" referral from $100,000 to $150,000. The bill retains provisions of current law which make all arbitration awards subject to trial de novo, as well as numerous procedural limits on arbitrator powers. A number of classes of cases are excluded from consideration for arbitration, and there are various safeguards in consent (voluntary) cases. In essence, all Federal arbitration cases, both "mandatory" and "voluntary," are more accurately described as "non-binding" arbitration.

HEARINGS

H.R. 1102, the Court Arbitration Authorization Act of 1993, was the subject of hearings before the Subcommittee on Intellectual Property and Judicial Administration on May 5, 1993, at which time the following witnesses appeared: the Honorable William Schwarzer, Judge, Northern District of California, and Director of the Federal Judicial Center; the Honorable Ann C. Williams, Judge, United States District Court of the Northern District of Illi-

nois; the Honorable Jerome B. Simandle, Judge, United States District Court of New Jersey (Judges Williams and Simandle serve on the Committee on Court Administration and Case Management of the Judicial Conference of the United States); Mr. Robert D. Raven, Chairman, Standing Committee on Dispute Resolution, American Bar Association; and Mr. Ronald M. Sturtz, a representative of the Section on Litigation, American Bar Association.

COMMITTEE VOTE

On October 6, 1993, a reporting quorum being present, the Committee on the Judiciary ordered H.R. 1102, as amended, reported to the full House by voice vote.

DISCUSSION

At the present time, Federal Court-annexed arbitration programs consist generally of the following features:

1. Cases are either mandatorily (maximum value of $100,000) referred to arbitration or provided the opportunity for a voluntary arbitration hearing conducted by a single arbitrator or by a panel of three arbitrators. The arbitrators are generally lawyers who have volunteered to serve and are paid at levels specified by each district.
2. Following a hearing at which each side presents its case, arbitrator(s) issue a decision based on the merits of the case and, where appropriate, determine an award.
3. Parties who are dissatisfied with the decision at arbitration then have a specified period of time to file a demand for trial de novo.
4. If a demand is filed, the case goes back onto the regular docket for pretrial and trial by the judge assigned to the case.
5. If a trial de novo is not demanded, the arbitration award becomes a non-appealable judgment of the court.

The procedures for this arbitration process are outlined in Chapter 44 of Title 28, United States Code (28 U.S.C. §§651–58). This chapter presently authorizes 10 pilot programs of "mandatory" court-annexed arbitration that were in operation in the Federal courts in 1988. In addition, the 1988 legislation authorized 10 additional districts which were to be selected later by the U.S. Judicial Conference for "voluntary" programs. The legislation further required that the Federal Judicial Center (FJC) submit a report on the implementation of the Act, which it transmitted to Congress on October 4, 1991. Based upon this study, the Federal Judicial Center recommended that Congress approve legislation authorizing all Federal Courts to adopt, in their discretion, local rules for arbitration to be "mandatory" or "voluntary" in the discretion of the various courts. Based upon this recommendation, Chairman Hughes of the Subcommittee on Intellectual Property and Judicial Administration and the ranking minority Member of the Subcommittee, Mr. Moorhead, introduced H.R. 1102 on February 24, 1993, which specifically followed the FJC recommendation. The authorization for this program would otherwise expire on November 19, 1993.

As the terms are used in reference to this program, "voluntary" means that after as case is selected for arbitration, a party has the

right to accept or reject the process. "Mandatory" means that the parties must participate in the arbitration process unless excused by the court. As noted earlier, all Federal arbitration cases are subject to trial de novo and therefore should be characterized as "non-binding" arbitration.

On May 5, 1993, the Subcommittee on Intellectual Property and Judicial Administration held a hearing on H.R. 1102. The witnesses stated that the "mandatory" Federal arbitration programs were meeting their goals of providing meaningful options to litigants. Theoretical criticism of these programs as "second class justice" or "undue burdens upon the right to jury trials" were not substantiated in actual experience. For instance, in New Jersey's "mandatory" program, assignment to arbitration typically resolves the case in somewhat less time, at less cost and with greater litigant satisfaction than standard pretrial and trial processes.

Probably the most dramatic testimony at the hearing concerned the District Court in New Jersey which was one of the 10 pilot districts for compulsory, non-binding court-annexed arbitration (mandatory). This program has operated since 1985. Approximately 20 percent of New Jersey's civil case filings qualify for the program. These are generally contract and tort cases in diversity jurisdiction in which not more than $100,000 is in dispute. There also was testimony that the litigants in larger cases are voluntarily seeking to have the benefit of the programs. Arbitration cases are placed on the "Arbitration Track" under the Court's plan, which means that a suitable period for pretrial discovery and motion practice is scheduled by the Magistrate Judge as in all civil cases, followed by an Arbitration Hearing presided over by a single certified Arbitrator. The Arbitration Hearing is trial-like, including testimony, documents and arguments of counsel. The Arbitrator's award is accompanied by a statement of reasons based on law and facts. Most cases (over 90 percent have been resolved without a request for trial de novo; of all cases placed into the program—including increasingly complex voluntary arbitration cases—the number of cases requiring actual trial over the eight years is less than 1.5 percent.

All of the witnesses testified that the dollar limit for "mandatory" programs should be raised to at least $150,000.

The overall testimony did indicate, however, that the "voluntary" programs were not working well, although the FJC has not completed an evaluation of their programs. Preliminary indications are that the voluntary programs have been notably unsuccessful, due primarily to their inability to attract cases. Whether this is due to lack of knowledge of the process, habit or aversion is unknown at this time. It is also important to note at this juncture that just as no arbitration programs are completely mandatory, there are also degrees of "voluntariness". For example, voluntary arbitration procedures may consist of a simple notification, via local rule, that the program is available. There are other programs that notify participants in select cases inviting them to participate in arbitration. Other voluntary programs refer selected cases to arbitration but allow litigants to refuse to participate.

At present there are 7 active Federal voluntary programs. Two provide for notification to parties in selected cases to inform them

of the arbitration programs and invite them to participate. The other programs generally designate certain cases for arbitration but allows either party to refuse to participate. The first "notice" program has had little success, attracting only one participant out of over 1,000 cases noticed. In the latter programs there has been more success in attracting participants, although even in the most successful of these only 57 percent of the referred cases remained in the programs.

Based upon this testimony, Chairman Hughes offered an amendment in the nature of a substitute to H.R. 1102 at the Subcommittee mark up on August 5, 1993, which requires that all district courts provide some sort of arbitration program (voluntary or mandatory) by local rule and increases the amount allowable under 28 U.S.C. § 652(a)(1)(B) to $150,000. The Subcommittee agreed to this amendment by voice vote.

The Committee also recommends that each District Court review the FJC study on "Court-annexed arbitration in 10 District Courts" and the testimony before the Subcommittee before deciding upon the nature of their local rule on arbitration. We would encourage courts to designate certain categories of cases for mandatory referral. In doing so the Committee emphasizes that no Federal arbitration program is truly mandatory. For example, actions involving rights secured by the Constitution or civil rights suits under 28 U.S.C. § 1343 are not referred under this program (28 U.S.C. § 652(b)). Also, suits that are complex or have novel legal issues, suits where legal issues predominate and suits for "other good cause" may be excluded by local rule (28 U.S.C. § 652(c)).

Finally, to reiterate, all arbitration awards are subject to trial de novo if a party is not satisfied with the outcome. There are some disincentives permitted by the legislation, such as requiring payment of the arbitrators' fees if the party who demands a trial de novo does not receive a judgment more favorable than the arbitration award. These fees average only around $350, however, and the data so far indicates that this disincentive is an insignificant barrier. Actual trials de novo of cases assigned to "mandatory" arbitration are very rare. (For instance, in the Eastern District of Pennsylvania, only about 3 percent of cases assigned to mandatory arbitration result in trials.)

SECTION-BY-SECTION ANALYSIS

SECTION 1

This is the short title, the "Court Arbitration Authorization Act of 1993."

SECTION 2

This section removes the language repealing Chapter 44 of Title 28, United States Code, on November 19, 1993.

SECTION 3

This section permanently authorizes appropriations for the arbitration programs.

SECTION 4

This section states that all U.S. District Courts shall make available to litigants some form of arbitration process in accordance with chapter 44 as amended (28 U.S.C. §§651–57). Options available to the courts are outlined in general under 28 U.S.C. §652(a)(A) ("voluntary") or §652(a)(B) ("mandatory") or some combination of the two.

Section 4 also increases the amount allowable in "mandatory" cases from $100,000 up to $150,000.

SECTION 5

This is a conforming amendment.

Committee Oversight Fundings

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of the report.

Committee on Government Operations Oversight Findings

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

New Budget Authority and Tax Expenditures

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased to expenditures.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 1102 will have no significant inflationary impact on prices and costs in the national economy.

Congressional Budget Office Cost Estimate

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 1102, the following estimate and comparison prepared by the director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 8, 1993.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1102, the Court Arbitration Authorization Act of 1993, as ordered reported by the House Committee on the Judiciary on October 6, 1993. CBO estimates that implementing the arbitration programs authorized by the bill would cost 45 million to $8 million a year. Some offsetting savings in the operation of the judiciary are possible, but the backlog of civil cases may prevent any reduction in staffing or other expenses.

H.R. 1102 would authorize all 94 district courts to adopt an arbitration program for civil cases. Each court would choose the types of cases for which arbitration would be used and would determine whether the use of such arbitration would be mandatory or voluntary. The bill would permit courts to require arbitration for civil cases when the damages sought are not more than $150,000. Under the Judicial Improvements and Access to Justice Act of 1988, an arbitration program was established in 20 federal courts; authorization for this pilot program expires on November 19, 1993.

Experience with the pilot program indicates that, on average, a district court can be expected to spend $95,000 a year to run a mandatory arbitration program and $45,000 a year for a voluntary program. These costs include compensation to arbitrators and arbitration clerks. It is difficult to predict how many courts would adopt mandatory programs and how many would opt for voluntary ones. Allowing for various possibilities in the courts' selections, CBO estimates that it would cost $5 million to $8 million annually to implement and maintain the arbitration programs, assuming that the necessary amounts are appropriated.

While it is possible that the arbitration program would serve as a more efficient and cost-effective alternative for all parties involved, any potential budgetary savings to the court system cannot be estimated at this time. According to the Administrative Office of the United States Courts, data obtained from the pilot program regarding the impact of arbitration on the judiciary's costs are inconclusive.

CBO estimates that enactment of H.R. 1102 would result in no cost to state or local governments. Also, the bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne Mehlman who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as re-

ported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

JUDICIAL IMPROVEMENTS AND ACCESS TO JUSTICE ACT

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SEC. 3. TABLE OF CONTENTS.

TITLE I—FEDERAL COURTS STUDY COMMITTEE

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TITLE IX—ARBITRATION

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TITLE IX—ARBITRATION

SEC. 901. ARBITRATION AUTHORIZATION BY DISTRICT COURTS.

(a) * * *

* * * * * * *

[(c) EXCEPTION TO LIMITATION ON MONEY DAMAGES.—Notwithstanding section 652 (as added by subsection (a) of this section), establishing a limitation of $100,000 in money damages with respect to cases referred to arbitration, a district court listed in section 658 (as added by subsection (a) of this section), whose local rule on the date of the enactment of this Act provides for a limitation on money damages, with respect to such cases, of not more than $150,000, may continue to apply the higher limitation.]

* * * * * * *

SEC. 905. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated [for the fiscal year ending September 30, 1989, and for each of the succeeding 4 fiscal years,] to the judicial branch such sums as may be necessary to carry out the purposes of chapter 44, as added by section 901 of this Act. Funds appropriated under this section shall be allocated by the Administrative Office of the United States Courts to Federal judicial districts and the Federal Judicial Center. The funds so appropriated are authorized to remain available until expended[, except that such funds may not be expended for the arbitration of actions referred to arbitration after the date of repeal set forth in section 906 of this Act].

* * * * * * *

[SEC. 906. REPEAL.

[Effective 5 years after the date of the enactment of this Act, chapter 44, as added by section 901 of this Act, and the item relating to that chapter in the table of chapters at the beginning of part III of such title, are repealed, except that the provisions of that

chapter shall continue to apply through final disposition of all actions in which referral to arbitration was made before the date of repeal.]

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TITLE 28, UNITED STATES CODE

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PART III—COURT OFFICERS AND EMPLOYEES

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CHAPTER 44—ARBITRATION

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§ 651. Authorization of arbitration

[(a) AUTHORITY OF CERTAIN DISTRICT COURTS.—Each United States district court described in section 658 may authorize by local rule the use of arbitration in any civil action, including an adversary proceeding in bankruptcy. A district court described in section 658(1) may refer any such action to arbitration as set forth in section 652(a). A district court described in section 658(2) may refer only such actions to arbitration as are set forth in section 652(a)(1)(A).]

(a) AUTHORITY.—Each United States district court shall authorize by local rule the use of arbitration in civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter.

* * * * * * *

§ 652. Jurisdiction

(a) ACTIONS THAT MAY BE REFERRED TO ARBITRATION.—(1) Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c) of this section, [and section 901(c) of the Judicial Improvements and Access to Justice Act, a district court that authorizes arbitration under section 651] *a district court* may—

(A) allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it if the parties consent to arbitration, and

(B) require the referral to arbitration of any civil action pending before it if the relief sought consists only of money damages not in excess of [$100,000] *$150,000* or such lesser amount as the district court may set, exclusive of interest and costs.

(2) For purposes of paragraph (1)(B), a district court may presume damages are not in excess of [$100,000] *$150,000* unless counsel certifies that damages exceed such amount.

* * * * * * *

§ 656. Certification of arbitrators

(a) STANDARDS FOR CERTIFICATION.—Each district court [listed in section 658] shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator—

(1) shall take the oath or affirmation described in section 453, and

(2) shall be subject to the disqualification rules of section 455.

* * * * * * *

[§ 658. District courts that may authorize arbitration

[The district courts for the following judicial districts may authorize the use of arbitration under this chapter:

[(1) Northern District of California, Middle District of Florida, Western District of Michigan, Western District of Missouri, District of New Jersey, Eastern District of New York, Middle District of North Carolina, Western District of Oklahoma, Eastern District of Pennsylvania, and Western District of Texas.

[(2) Ten additional judicial districts, which shall be approved by the Judicial Conference of the United States. The Judicial Conference shall give notice of the 10 districts approved under this paragraph to the Federal Judicial Center and to the public.]

* * * * * * *

ADDITIONAL VIEWS OF ROMANO MAZZOLI

I do not oppose H.R. 1102, the Court Arbitration Act of 1993, and I commend efforts advanced in the measure to ease the heavy burdens now incumbent on the federal courts of our land.

However, I am troubled by the concept of "mandatory arbitration" which is a centerpiece of H.R. 1102 and urge my colleagues not to add language to the Committee Report, recommended by the distinguished Subcommittee on Intellectual Property and Judicial Administration, that District Courts be "encouraged . . . to select, certain categories of cases for mandatory referral" to arbitration.

Under H.R. 1102, all District Courts would be required to establish either a mandatory or a discretionary arbitration program. While the litigant can secure a trial de novo of a mandatory arbitration award felt to be unsatisfactory, H.R. 1102 allows the levy of fees and charges to serve as "disincentives" for seeking for such a trial.

To go beyond requiring the Districts to establish either a mandatory or a voluntary court-assisted arbitration program and to direct the Districts to emphasize mandatory arbitration could result in the denial—at least in practical terms—of a civil litigant's right to a trial by jury before an Article III judge. This is the opinion expressed to me by judges sitting in both the Western and the Eastern Districts of Kentucky.

I believe the Committee should have modified the mandatory nature of the arbitration process provided under H.R. 1102. But, having failed to do that, the Committee should not compound the problem by adding language to the Committee Report urging the federal courts to expand the range of cases subject to mandatory arbitration.

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103D CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 103–285

PATENT AND TRADEMARK OFFICE AUTHORIZATION ACT OF 1993

OCTOBER 12, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2632]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2632) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1994, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Patent and Trademark Office Authorization Act of 1993".

SEC. 2. AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Patent and Trademark Office for salaries and necessary expenses the sum of $103,000,000 for fiscal year 1994, to be derived from deposits in the Patent and Trademark Office Fee Surcharge Fund established under section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. note).

(b) FEES.—There are also authorized to be made available to the Patent and Trademark Office for fiscal year 1994, to the extent provided in advance in appropriation Acts, such sums as are equal to the amount collected during such fiscal year from fees under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following).

SEC. 3. AMOUNTS AUTHORIZED TO BE CARRIED OVER.

Amounts appropriated or made available pursuant to this Act may remain available until expended.

79–006

SEC. 4. ADJUSTMENT OF TRADEMARK FEES.

Effective on the date of the enactment of this Act, the fee under section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)) for filing an application for the registration of a trademark shall be $245. Any adjustment of such fee under the second sentence of such section may not be effective before October 1, 1994.

EXPLANATION OF AMENDMENT

Inasmuch as H.R. 2632 was reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

SUMMARY AND PURPOSE

The purpose of H.R. 2632 is to authorize appropriations for the patent and Trademark Office for Fiscal Year 1994 and to approve an increase in the trademark application fees beyond that permitted by present statutory authority.

Under the amendment in the nature of a substitute and the amendments adopted by the Committee, the Patent and Trademark Office will be permitted to raise the trademark application fees from $210 to $245 for Fiscal Year 1994. The increased fee will be the fee upon which any possible future fee increases will be based. The effective date of the $245 fee increase is upon enactment of this Act.

HEARINGS

The Subcommittee on Intellectual Property and Judicial Administration held a legislative hearing on July 28, 1993 on H.R. 2632 at which time the following witness appeared: Mike G. Kirk, Acting Commissioner of Patents and Trademarks.

At the hearing, the Patent and Trademark Office testified that the trademark fee needed to be raised beyond the statutory authority of a cost of living increase which is calculated from the Consumer Price Index. For a number of years, the Patent and Trademark Office operated the trademark office at a surplus and has not needed to raise the trademark fees beyond the cost of living increase. The surplus no longer exists. In addition, the accounting system has changed to charge the trademark operations for a greater share of the total overhead expenses for the Patent and Trademark Office in line with actual use. The Patent and Trademark Office also testified that the fee increase had been discussed and negotiated with interested parties in the intellectual property community.

COMMITTEE VOTE

On October 6, 1993, a reporting quorum being present, the Committee ordered H.R. 2632, as amended, reported to the full House by a voice vote.

DISCUSSION

The bill authorizes appropriations for the Patent and Trademark Office in the amount of $103,000,000 to be derived from the deposits in the Patent and Trademark Office Fee Surcharge Fund established under section 10101 of the Omnibus Budget Reconciliation Act of 1990 (see 35 U.S.C. § 41 note). The bill authorizes to be

made available the sums equal to the amount collected from fees imposed by the patent and Trademark Office to the extent provided in advance in appropriation Acts. The legislation also provides authority to raise trademark applications fees beyond a cost of living increase.

The past three reauthorization bills for the Patent and Trademark Office, beginning with Public Law 99–607, included a prohibition on exchange agreements relating to automatic data processing resources. This prohibition became necessary after the Patent and Trademark Office entered into uncompetitive agreements with outside automation providers that limited public access to Patent and Trademark Office information.

This legislation does not include the limitation on exchange agreements, based on the Patent and Trademark Office's assurance to the Committee that it will not exercise its exchange authority in a manner which avoids Federal procurement policy or results in uncompetitive practices. This Committee will use its oversight authority to monitor closely the procedure and effect of entering into any exchange agreement by the Patent and Trademark Office to insure that a policy of competition prevails.

SECTION-BY-SECTION ANALYSIS

Section 1

This is the short title, the "Patent and Trademark Office Authorization Act of 1993."

Section 2

This section authorizes the amount of $103,000,000 to be appropriated to the Patent and Trademark Office for salaries and expenses to be derived from the deposits in the Patent and Trademark Office Fee Surcharge Fund established under section 10101 of the Omnibus Budget Reconciliation Act of 1990 (see 35 U.S.C. § 41 note).

This section also authorizes to be made available to the Patent and Trademark Office for fiscal year 1994 sums equal to the amount of fees collected under Title 35, United States Code and the Trademark Act of 1946 (15 U.S.C. § 1051 and following).

Section 3

This section permits amounts appropriated or made available to remain available until expended.

Section 4

This section increases the trademark application fee to $245 as of the date of enactment and restricts any further adjustment of this fee under section 31(a) of the Trademark Act of 1946 (15 U.S.C. § 1113(a)) before October 1, 1994.

COMMITTEE OVERSIGHT HEARINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

resentatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT OPERATIONS OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(b) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 2632, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 8, 1993.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2632, the Patent and Trademark Office Authorization Act of 1993, as ordered reportedly by the House Committee on the Judiciary on October 6, 1993. CBO estimates that implementation of H.R. 2632 would result inoutlays of $57 million in 1994 and $46 million in 1995, assuming appropriation of the authorized amounts. the bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply.

H.R. 2632 would authorize the appropriation of $103 million for the Patent and Trademark Office (PTO) for fiscal year 1994. Based on information from the PTO, we estimate that this amount would be spent in fiscal years 1994 and 1995. The bill also would authorize the PTO to spend offsetting collections from patent and trademark fees to the extent provided in advance in appropriations acts. CBO estimates that both collections from these fees and the related spending would be approximately $415 million in 1994. This amount includes an estimated $4 million in additional collections that would result from section 4 of the bill, which would increase the filing fee for trademark applications from $210 to $245.

CBO estimates that enactment of H.R. 2632 would result in no cost to state or local governments.

If you wish further details on the estimate, we will be pleased to provide them. The CBO staff contact is John Webb, who can be reached at 226–2860.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2632 will have no significant inflationary impact on prices and costs in the national economy.

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–286

COPYRIGHT ROYALTY TRIBUNAL REFORM ACT OF 1993

OCTOBER 12, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2840]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2840) to amend title 17, United States Code, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Royalty Tribunal Reform Act of 1993".

SEC. 2. COPYRIGHT ARBITRATION ROYALTY PANELS.

(a) ESTABLISHMENT AND PURPOSE.—Section 801 of title 17, United States Code, is amended as follows:

(1) The section designation and heading are amended to read as follows:

"**§ 801. Copyright arbitration royalty panels: establishment and purpose**";

(2) Subsection (a) is amended to read as follows:

"(a) ESTABLISHMENT.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, is authorized to appoint and convene copyright arbitration royalty panels.";

(3) Subsection (b) is amended—

(A) by inserting "PURPOSES.—" after "(b)";

(B) in the matter preceding paragraph (1), by striking "Tribunal" and inserting "copyright arbitration royalty panels";

(C) in paragraph (2)—

(i) in subparagraph (A), by striking "Commission" and inserting "copyright arbitration royalty panels"; and

(ii) in subparagraph (B), by striking "Copyright Royalty Tribunal" and inserting "copyright arbitration royalty panels";

(D) in paragraph (3), by striking "In determining" and all that follows through the end of the paragraph; and

(E) in paragraph (4) by striking "to determine" and all that follows through "chapter 10" and inserting "and to determine the distribution of such payments."; and

(4) by amending subsection (c) to read as follows:

"(c) RULINGS.—The Librarian of Congress, upon the recommendation of tha Register of Copyrights, may, before a copyright arbitration royalty panel is convened, make any necessary procedural or evidentiary rulings that would apply to the proceedings conducted by such panel.".

(b) MEMBERSHIP AND PROCEEDINGS.—Section 802 of title 17, United States Code, is amended to read as follows:

"§ 802. Membership and proceedings of copyright arbitration royalty panels

"(a) COMPOSITION OF COPYRIGHT ARBITRATION ROYALTY PANELS.—A copyright arbitration royalty panel shall consist of 3 arbitrators selected by the Librarian of Congress pursuant to subsection (b).

"(b) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of a notice initiating an arbitration proceeding under section 804, and in accordance with procedures specified by the Register of Copyrights, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, select 2 arbitrators from lists of arbitrators provided to the Librarian by parties participating in the arbitration and by professional arbitration associations or such similar organizations as the Librarian shall select. The 2 arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same lists, who shall serve as the chairperson of the arbitrators. If such 2 arbitrators fail to agree upon the selection of a third arbitrator, the Librarian of Congress shall promptly select the third arbitrator.

"(c) ARBITRATION PROCEEDINGS.—Copyright arbitration royalty panels shall conduct arbitration proceedings, in accordance with such procedures as they may adopt, for the purpose of making their determinations in carrying out the purposes set forth in section 801. The arbitration panels shall act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c). Any copyright owner who claims to be entitled to royalties under section 111, 116, or 119, or any interested copyright party who claims to be entitled to royalties under section 1006, may submit relevant information and proposals to the arbitration panels in proceedings applicable to such copyright owner or interested copyright party, and any other person participating in arbitration proceedings may submit such relevant information and proposals to the arbitration panel conducting the proceedings. The parties to the proceedings shall bear the entire cost thereof in such manner and proportion as the arbitration panels shall direct.

"(d) REPORT TO THE LIBRARIAN OF CONGRESS.—Not later than 180 days after publication of the notice initiating an arbitration proceeding, the copyright arbitration royalty panel conducting the proceeding shall report to the Librarian of Congress its determination concerning the royalty fee or distribution of royalty fees, as the case may be. Such report shall be accompanied by the written record, and shall set forth the facts that the arbitration panel found relevant to its determination.

"(e) ACTION BY LIBRARIAN OF CONGRESS.—Within 60 days after receiving the report of a copyright arbitration royalty panel under subsection (d), the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt or reject the determination of the arbitration panel. The Librarian shall adopt the determination of the arbitration panel unless the Librarian finds that the determination is arbitrary. If the Librarian rejects the determinetion of the arbitration panel, the Librarian shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be. The Librarian shall cause to be published in the Federal Register the determination of the arbitration panel, and the decision of the Librarian (including an order issued under the preceding sentence). The Librarian shall also publicize such determination and decision in such other manner as the Librarian considers appropriate. The Librarian shall also make the report of the arbitration panel and the accompanying record available for public inspection and copying.

"(f) JUDICIAL REVIEW.—Any decision of the Librarian of Congress under subsection (e) with respect to a determination of an arbitration panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after

the publication of the decision in the Federal Register. If no appeal is brought within such 30-day period, the decision of the Librarian is final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in the decision. The pendency of an appeal under this paragraph shall not relieve persons obligated to make royalty payments under sections 111, 115, 116, 118, 119, or 1003 who would be affected by the determination on appeal to deposit the statement of account and royalty fees specified in those sections. The court shall have jurisdiction to modify or vacate a decision of the Librarian only if it finds, on the basis of the record before the Librarian, that the Librarian acted in an arbitrary manner. If the court modifies the decision of the Librarian, the court shall have jurisdiction to enter its own determination with respect to the amount or distribution of royalty fees and costs, to order the repayment of any excess fees, and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the arbitration panel and remand the case for arbitration proceedings in accordance with subsection (c).

"(g) ADMINISTRATIVE MATTERS.—

"(1) DEDUCTION OF COSTS FROM ROYALTY FEES.—The Librarian of Congress and the Register of Copyrights may, to the extent not otherwise provided under this title, deduct from royalty fees deposited or collected under this title the reasonable costs incurred by the Library of Congress and the Copyright Office under this chapter. Such deduction may be made before the fees are distributed to any copyright claimants.

"(2) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 115, 116, 118, or 119 or chapter 10.".

(c) ADJUSTMENT OF COMPULSORY LICENSE RATES.—Section 803 of title 17, United States Code, and the item relating to such section in the table of sections at the beginning of chapter 8 of such title, are repealed.

(d) INSTITUTION AND CONCLUSION OF PROCEEDINGS.—Section 804 of title 17, United States Code, is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a)(1) With respect to proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in sections 115 and 116, and with respect to proceedings under subparagraphs (A) and (D) of section 801(b)(2), during the calendar years specified in the schedule set forth in paragraphs (2), (3), and (4), any owner or user of a copyrighted work whose royalty rates are specified by this title, established by the Copyright Royalty Tribunal before the date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, or established by a copyright arbitration royalty panel after such date of enactment, may file a petition with the Librarian of Congress declaring that the petitioner requests an adjustment of the rate. The Librarian of Congress shall, upon the recommendation of the Register of Copyrights, make a determination as to whether the petitioner has such a significant interest in the royalty rate in which an adjustment is requested. If the Librarian determines that the petitioner has such a significant interest, the Librarian shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter.

"(2) In proceedings under section 801(b)(2)(A) and (D), a petition described in paragraph (1) may be filed during 1995 and in each subsequent fifth calendar year.

"(3) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, a petition described in paragraph (1) may be filed in 1997 and in each subsequent tenth calendar year.

"(4)(A) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 116, a petition described in paragraph (1) may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

"(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Librarian of Congress shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, convene a copyright arbitration royalty panel. The arbitration panel shall promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of non-dramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate

or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings by the arbitration panel, in accordance with section 802, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).".

(2) Subsection (b) is amended—

(A) by striking "subclause" and inserting "subparagraph";

(B) by striking "Tribunal" the first place it appears and inserting "Copyright Royalty Tribunal or the Librarian of Congress";

(C) by striking "Tribunal" the second and third places it appears and inserting "Librarian";

(D) by striking "Tribunal" the last place it appears and inserting "Copyright Royalty Tribunal or the Librarian of Congress"; and

(E) by striking "(a)(2), above" and inserting "subsection (a) of this section".

(3) Subsection (c) is amended by striking "Tribunal" and inserting "Librarian of Congress".

(4) Subsection (d) is amended—

(A) by striking "Chairman of the Tribunal" and inserting "Librarian of Congress"; and

(B) by striking "determination by the Tribunal" and inserting "a determination".

(5) Section 804 is further amended by striking subsection (e).

(e) REPEAL.—Sections 805 through 810 of title 17, United States Code, and the items relating to such sections in the table of sections at the beginning of chapter 8 of such title, are repealed.

(f) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 8 of title 17, United States Code, is amended by striking the items relating to sections 801 and 802 and inserting the following:

"801. Copyright arbitration royalty panels: establishment and purpose.
"802. Membership and proceedings of copyright arbitration royalty panels.".

SEC. 3. JUKEBOX LICENSES.

(a) REPEAL OF COMPULSORY LICENSE.—Section 116 of title 17, United States Code, and the item relating to section 116 in the table of sections at the beginning of chapter 1 of such title, are repealed.

(b) NEGOTIATED LICENSES.—(1) Section 116A of title 17, United States Code, is amended—

(A) by redesignating such section as section 116;

(B) by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c), respectively;

(C) in subsection (b)(2) (as so redesignated) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Librarian of Congress";

(D) in subsection (c) (as so redesignated)—

(i) in the subsection caption by striking "ROYALTY TRIBUNAL" and inserting "ARBITRATION ROYALTY PANEL";

(ii) by striking "subsection (c)" and inserting "subsection (b)"; and

(iii) by striking "the Copyright Royalty Tribunal" and inserting "a copyright arbitration royalty panel"; and

(E) by striking subsections (e), (f), and (g).

(2) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by striking "116A" and inserting "116".

SEC. 4. PUBLIC BROADCASTING COMPULSORY LICENSE.

Section 118 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) by striking the first 2 sentences;

(B) in the third sentence by striking "works specified by this subsection" and inserting "published nondramatic musical works and published pictorial, graphic, and sculptural works";

(C) in paragraph (1)—

(i) in the first sentence by striking ", within one hundred and twenty days after publication of the notice specified in this subsection,"; and

(ii) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Librarian of Congress";

(D) in paragraph (2) by striking "Tribunal" and inserting "Librarian of Congress";

(E) in paragraph (3)—

(i) by striking the first sentence and inserting the following: "In the absence of license agreements negotiated under paragraph (2), the Li-

brarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress.";

(ii) in the second sentence—

(I) by striking "Copyright Royalty Tribunal" and inserting "copyright arbitration royalty panel"; and

(II) by striking "clause (2) of this subsection" and inserting "paragraph (2)"; and

(iii) in the last sentence by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(F) by striking paragraph (4);

(2) in subsection (c)—

(A) by striking "1982" and inserting "1997"; and

(B) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(3) in subsection (d)—

(A) by striking "to the transitional provisions of subsection (b)(4), and";

(B) by striking "the Copyright Royalty Tribunal" and inserting "a copyright arbitration royalty panel"; and

(C) in paragraphs (2) and (3) by striking "clause" each place it appears and inserting "paragraph"; and

(4) in subsection (g) by striking "clause" and inserting "paragraph".

SEC. 5. SECONDARY TRANSMISSIONS BY SUPERSTATIONS AND NETWORK STATIONS FOR PRIVATE VIEWING.

Section 119 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1) by striking ", after consultation with the Copyright Royalty Tribunal," each place it appears;

(B) in paragraph (2) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(C) in paragraph (3) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(D) in paragraph (4)—

(i) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Librarian of Congress";

(ii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress"; and

(iii) in subparagraph (B) by striking "conduct a proceeding" in the last sentence and inserting "convene a copyright arbitration royalty panel"; and

(2) in subsection (c)—

(A) in the subsection caption by striking "DETERMINATION" and inserting "ADJUSTMENT";

(B) in paragraph (2) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Librarian of Congress";

(C) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(II) by striking the last sentence and inserting the following: "Such arbitration proceeding shall be conducted under chapter 8.";

(ii) by striking subparagraphs (B) and (C);

(iii) in subparagraph (D)—

(I) by redesignating such subparagraph as subparagraph (B); and

(II) by striking "Arbitration Panel" and inserting "copyright arbitration royalty panel appointed under chapter 8";

(iv) by striking subparagraphs (E) and (F);

(v) by amending subparagraph (G) to read as follows:

"(C) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

"(i) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(e), or

"(ii) is established by the Librarian of Congress under section 802(e), shall become effective as provided in section 802(f)."; and

(vi) in subparagraph (H)—

(I) by redesignating such subparagraph as subparagraph (D); and

(II) by striking "adopted or ordered under subparagraph (F)" and inserting "referred to in subparagraph (C)"; and

(D) by striking paragraph (4).

SEC. 6. CONFORMING AMENDMENTS.

(a) CABLE COMPULSORY LICENSE.—Section 111(d) of title 17, United States Code, is amended as follows:

(1) Paragraph (1) is amended by striking ", after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),".

(2) Paragraph (1)(A) is amended by striking ", after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), from time to time prescribe" and inserting "from time to time prescribe".

(3) Paragraph (2) is amended by striking the second and third sentences and by inserting the following: "All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Librarian of Congress in the event no controversy over distribution exists, or by a copyright arbitration royalty panel in the event a controversy over such distribution exists.".

(4) Paragraph (4)(A) is amended—

(A) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(B) by striking "Tribunal" and inserting "Librarian of Congress".

(5) Paragraph (4)(B) is amended to read as follows:

"(B) After the first day of August of each year, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian determines that no such controversy exists, the Librarian shall, after deducting reasonable administrative costs under this section, distribute such fees to the copyright owners entitled to such fees, or to their designated agents. If the Librarian finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty fees.".

(6) Paragraph (4)(C) is amended by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress".

(b) AUDIO HOME RECORDING ACT.—

(1) ROYALTY PAYMENTS.—Section 1004(a)(3) of title 17, United States Code, is amended—

(A) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(B) by striking "Tribunal" and inserting "Librarian of Congress".

(2) DEPOSIT OF ROYALTY PAYMENTS.—Section 1005 of title 17, United States Code, is amended by striking the last sentence.

(3) ENTITLEMENT TO ROYALTY PAYMENTS.—Section 1006(c) of title 17, United States Code, is amended by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress shall convene a copyright arbitration royalty panel which".

(4) PROCEDURES FOR DISTRIBUTING ROYALTY PAYMENTS.—Section 1007 of title 17, United States Code, is amended—

(A) in subsection (a)(1)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(ii) by striking "Tribunal" and inserting "Librarian of Congress";

(B) in subsection (b)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(ii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress"; and

(C) in subsection (c)—

(i) by striking the first sentence and inserting "If the Librarian of Congress finds the existence of a controversy, the Librarian shall, pur-

suant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty payments.";

(ii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress"; and

(iii) in the last sentence by striking "its reasonable administrative costs" and inserting "the reasonable administrative costs incurred by the Librarian".

(5) ARBITRATION OF CERTAIN DISPUTES.—Section 1010 of title 17, United States Code, is amended—

(A) in subsection (b)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(ii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress";

(B) in subsection (e)—

(i) in the subsection caption by striking "COPYRIGHT ROYALTY TRIBUNAL" and inserting "LIBRARIAN OF CONGRESS"; and

(ii) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(C) in subsection (f)—

(i) in the subsection caption by striking "COPYRIGHT ROYALTY TRIBUNAL" and inserting "LIBRARIAN OF CONGRESS";

(ii) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(iii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress"; and

(iv) in the third sentence by striking "its" and inserting "the Librarian's"; and

(D) in subsection (g)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(ii) by striking "Tribunal's decision" and inserting "decision of the Librarian of Congress"; and

(iii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress".

SEC. 7. EFFECTIVE DATE AND TRANSITION PROVISIONS.

(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect on January 1, 1994.

(b) EFFECTIVENESS OF EXISTING RATES AND DISTRIBUTIONS.—All royalty rates and all determinations with respect to the proportionate division of compulsory license fees among copyright claimants, whether made by the Copyright Royalty Tribunal, or by voluntary agreement, before the effective date set forth in subsection (a) shall remain in effect until modified by voluntary agreement or pursuant to the amendments made by this Act.

(c) TRANSFER OF APPROPRIATIONS.—All unexpended balances of appropriations made to the Copyright Royalty Tribunal, as of the effective date of this Act, are transferred on such effective date to the Copyright Office for use by the Copyright Office for the purposes for which such appropriations were made.

EXPLANATION OF AMENDMENT

Inasmuch as H.R. 2840 was reported with an amendment in the nature of a substitute, as amended, the contents of this report constitute an explanation of the amendment in the nature of a substitute and both amendments.

SUMMARY AND PURPOSE

The purpose of H.R. 2840 is to abolish the Copyright Royalty Tribunal and reassign its duties to ad hoc arbitration panels, the Copyright Office, and the Librarian of Congress.

Committee Action and Vote

H.R. 2840 was considered by the committee on the Judiciary on October 6, 1993. A reporting quorum being present, the Committee ordered H.R. 2840 reported to the full House by voice vote, with an amendment in the nature of a substitute, as amended.

Hearings

On March 3 and 4, 1993, the Subcommittee on Intellectual Property and Judicial Administration held hearings on H.R. 897, Title II of which contained provisions abolishing the Copyright Royalty Tribunal. Testimony on Title II was received from James H. Billington, the Librarian of Congress; Ralph Oman, the Register of Copyrights; Cindy Daub, Commissioner, Copyright Royalty Tribunal; Bruce Goodman, Commissioner, Copyright Royalty Tribunal; and, Edward Damich, Commissioner, Copyright Royalty Tribunal. On August 3, 1993, Title II of H.R. 897 was reintroduced as H.R. 2840.

Legislative History

On February 16, 1993, Mr. Hughes and Mr. Frank introduced H.R. 897, the Copyright Reform Act of 1993.[1] Title II of this Act contained provisions abolishing the Copyright Royalty Tribunal. Hearings were held on H.R. 897 on March 3 and 4, 1993.

Subsequently, H.R. 2840 was introduced on August 3, 1993 by Mr. Hughes and Mr. Frank and was referred to the Committee on the Judiciary the same day.[2] H.R. 2840 was, in substance, substantially similar to Title II of H.R. 897. On August 5, 1993, the Subcommittee on Intellectual Property and Judicial Administration marked up H.R. 2840 with a single amendment in the nature of a substitute.

On October 6, 1993, the full Committee marked up H.R. 2840, and a quorum of Members being present, approved the amendment in the nature of a substitute with two amendments offered en bloc by Mr. Hughes, and favorably reported the bill as amended by voice vote.

Discussion

BACKGROUND

The Copyright Royalty Tribunal is an independent agency in the legislative branch. It is currently comprised of three presidentially-appointed Commissioners (compensated at the level of pay in effect for level V of the Senior Executive Schedule), a General Counsel, and a five person support staff. The Tribunal was established in the 1976 Act for the purpose of periodically adjusting the compulsory license royalty rates in Sections 111, 115, 116, and 118 of title 17, United States Code, and, distributing royalties paid under sections 111 and 116 in the absence of agreement of the parties.

As established in the 1976 Copyright Act, the Tribunal was comprised of five Commissioners. An amendment in 1990 reduced the

[1] An identical bill, S. 373, was introduced that same day by Senators DeConcini and Hatch.
[2] An identical bill, S. 1346 was introduced on the same day by Senators DeConcini and Hatch.

number of Commissioners to three. In 1988, the Tribunal was assigned the duties of reviewing the determination of an ad hoc arbitration panel to be empaneled to adjust the compulsory royalty license rate for the Section 119 satellite carrier license, and distributing the royalty fees paid under that license in the absence of an agreement of the parties. In 1992, the Audio Home Recording Act gave the Tribunal the additional responsibilities of distributing royalties in the absence of agreement of the parties, and, beginning in 1998 and no more often than once each year thereafter, adjusting the maximum royalty rate for digital audio recording devices according to statutory criteria.

The Tribunal's origins lie in Congress's experience with the single compulsory license under the 1909 Act. Section 1(e) of that Act set a statutory rate of 2 cents on each part manufactured for the mechanical reproduction of nondramatic musical compositions. The statutory rate stayed in the law until January 1, 1976 Act became effective. The drafters of the 1976 Act wished to develop a non-legislative alternative to compulsory license rate adjustment, a desire that was heightened by the 1976 Act's addition of new compulsory licenses in section 111 (cable), section 116 (jukeboxes), and section 118 (public broadcasting).

The original proposals for the Tribunal were for ad hoc arbitration panels convened by the Register of Copyrights. The revision legislation passed by the Senate in 1976 adopted this approach. In reporting the revision bill out in September 1976, the House Judiciary Committee, concerned about the separation of powers issues raised by *Buckley* v. *Valeo,*[3] alterod the bill to provide for three Commissioners appointed by the President for a term of five years. In conference with the Senate, this provision was changed to five commissioners appointed for a term of seven years. In 1990, the number of Commissioners was reduced to three.

H.R. 2840 is not the first proposal to abolish the Copyright Royalty Tribunal. In 1981, the Chairman of the Tribunal testified before Congress and urged its abolition.[4] In 1985, Mr. Synar introduced H.R. 2752, "the Copyright Royalty Tribunal Sunset Act," which, similar to H.R. 2840, proposed to move the functions of the Tribunal to the Copyright Office. That same year Mr. Kastenmeier introduced H.R. 2784, to replace the Tribunal with a Copyright Royalty Court.

With 15 years experience, a clear record of the Tribunal's workload has been established. That workload is episodic and not sufficient to justify three full-time highly paid Commissioners. The following data, provided by the Tribunal amply bears this out. Specifically, the data is gathered from the CRT's "Summary Fact Sheet," from submissions to the Committee by Commissioners Damich and Daub, and by the CRT's General Counsel. Thus, all the data are from the CRT itself. The data cannot, of course, capture all of the activities of the commissioners, but it can establish the type of workload that ad hoc panels could be expected to handle.

[3] 424 U.S. 1 (1976).

[4] See Copyright Office, the U.S. Patent & Trademark Office, and the Copyright Royalty Tribunal: Oversight Hearings before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Comm., 97th Cong., 1st Sess. 67–74 (1981) (testimony of Chairman James).

Although given in number of days, the figures are generous since they count a half-hour hearing as one day.

1. Sunshine meetings

Data on meeting required to be identified publicly by the Sunshine Act were provided by the CRT's General Counsel. The data are for 1987 to 1992. The data include both rate setting and distribution proceedings.

1987, 18 days; 1988, 8 days; 1989, 18 days; 1990, 11 days; 1991, 36 days; 1992s; 5 days, total: 96 days.

Average days per year: 13.7 days.

If the jukebox license figures of 13 days are removed from this data (since the license is no longer administered by the CRT), the total is 83 days of hearings in six years for an average per year of 11.8 days. (This reduction might be off-set slightly by increased responsibilities under the Audio Home Recording Act of 1992.)

2. Daub data for hearings in 1990–1992

Commissioner Daub submitted data regarding the number of days of hearings for 1990–1992. According to Commissioner Daub, there were 52 days of such hearings. This results in an average of 17.33 days of such hearings per year.

3. Damich data for 1978 to 1992

Commissioner Damich submitted data for the years 1978 to 1992. Two types of charts were relevant for our purposes: (1) evidentiary hearings; and (2) formal meetings and evidentiary hearings. (The category contains all of the data for the first plus meetings).

A. Hearings

The Damich data reveal a total of 390 days of hearings for the entire 15 year period of 1978 to 1992, for an average of 26 days per year. If jukeboxes are deleted (since the license is no longer administered by the CRT), the figure drops to 359 days for an average of 23.9 days per year. (Another figure that skews that data upward is the mechanical license. There has only been one year out of fifteen in which there was any proceeding under this license, 1980. In that year, there were 47 days of hearings. If this figure is deleted and jukeboxes are deleted (in order to better gauge the future), the total is 312, or an average of 20.8 days per year.

The figures per year are: 1978, 10 days; 1979, 0 days; 1980, 75 days; 1981, 48 days; 1982, 74 days; 1983, 6 days; 1984, 16 days; 1985, 57 days; 1986, 29 days; 1987, 13 days; 1988, 4 days; 1989, 17 days; 1990, 6 days; 1991, 35 days; 1992, 0 days; Total, 390 days.

These figures clearly demonstrate an episodic workload.

B. Formal meetings and evidentiary hearings

(These figures include all of the days of hearings given in (a) above, plus meetings. The figures for meetings are overly generous because they count any meeting, no matter how short, as an entire day).

1978, 12 days; 1979, 2 days; 1980, 91 days; 1981, 64 days; 1982, 87 days; 1983, 13 days; 1984, 21 days; 1985, 69 days; 1986, 39

days; 1987, 29 days; 1988, 12 days; 1989, 30 days; 1990, 19 days; 1991, 44 days; 1992, 14 days; Total, 546 days.

Average number of days per year: 36.4

If the jukebox license is deleted from this, the total is 477 days for all fifteen years, or an average of 31.8 days per year.

Given this episodic workload, the Committee concluded that ad hoc arbitration panels are better suited to handle the functions currently handled by the Tribunal. The experience with arbitration under the Section 119 satellite compulsory license was positive, and indicates that this approach can work for the other royalty schemes in title 17. Testimony of witnesses before both Houses on the proposal supports this conclusion.

H.R. 2840 makes no substantive changes in the existing compulsory licenses, with one exception. Section 126, covering performance of nondramatic works by jukeboxes, is repealed. Section 116A effectively superseded section 116 in the Berne Implementation Act of 1988, is renumbered section 116, and as elsewhere in the bill, the Copyright Royalty Tribunal's functions are assigned to the Copyright Office and the Register of Copyrights, as well as to the ad hoc arbitration panels. The Committee believes that the availability of arbitration will provide a sufficient safety net for jukebox operators in the event that voluntary negotiations are unsuccessful.

The Register of Copyrights and the Librarian of Congress will play important roles in convening and reviewing the decisions of the arbitration panels. The Copyright Office is currently the "front end" of the compulsory license system. Statements of Account for the section 111, 119, and 1005 licenses are filed with the Office. The royalties paid in under these licenses are then deposited by the Copyright Office into the United States Treasury. Notices of Intention to use the section 115 mechanical license are filed with the Office, as are voluntary agreements entered into under the section 118 noncommercial broadcasting license. The Copyright Office also has authority to promulgate regulations for the administration of these functions.[5] Section 806 of the Copyright Act requires the Library of Congress to provide the Copyright Royalty Tribunal with necessary administrative services, including those related to budgeting, accounting, financial reporting, travel, personnel, and procurement.

In short, the Copyright Office and the Library of Congress already have considerable involvement in the administration of the compulsory licenses and in the work of the Tribunal. When combined with the Copyright Office's almost 100 year experience in copyright issues, assigning some of the duties formally carried out by the Tribunal to the Office and the Library makes good sense.

AMENDMENTS

As ordered reported by the Committee on October 6, 1993, two amendments, offered by Mr. Hughes, Chairman of the Subcommittee on Intellectual Property and Judicial Administration, were agreed to. The first amendment transfers to the Copyright Office any unexpended funds retained by the Copyright Royalty Tribunal on December 31, 1993. The second amendment ensures that the Li-

[5] 17 U.S.C. § 702 (1978).

brary of Congress and the Copyright Office will be able to deduct 100% of their costs of fulfilling their duties under the Act and will be able to fill any necessary positions.

SECTION-BY-SECTION ANALYSIS OF THE COMMITTEE SUBSTITUTE

SECTION 1. SHORT TITLE

Section 1 of the bill sets forth the title of the Act, the "Copyright Royalty Tribunal Reform Act of 1993."

SECTION 2. COPYRIGHT ARBITRATION ROYALTY PANELS

Section 2 amends Chapter 8 of title 17, United States Code, which currently governs the Copyright Royalty Tribunal.

Section 801 of title 17, United States Code, is amended to provide for ad hoc copyright arbitration royalty panels in lieu of the Copyright Royalty Tribunal. The panels are to be convened by the Librarian of Congress upon the recommendation of the Register of Copyrights. The remainder of current Section 801, which governs the factors to be taken into account in adjusting compulsory license rates and the circumstances under which the section 111 cable license rates may be adjusted, is not amended, consistent with the approach of the bill: to make only those procedural changes necessary to substitute arbitration panels for the Tribunal, and not to make any substantive changes in the compulsory licenses themselves.

Section 802 is amended to substitute provisions relating to the membership and proceedings of arbitration panels for provisions relating to the composition of the Copyright Royalty Tribunal. Section 802(a) as amended provides that a copyright arbitration panel shall consist of three arbitrators selected by the Librarian of Congress upon the recommendation of the Register of Copyrights according to the procedures set forth in section 802(b) as amended. Section 802(b) is patterned after current section 119(a)(c)(3). Not later than 10 days after the Librarian of Congress publishes in the Federal Register a notice initiating an arbitration panel convened under section 804 as amended, the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall select two arbitrators from lists of arbitrators provided to the Librarian by the parties participating in the arbitration and from lists provided by professional arbitration associations or similar organizations. The two arbitrators so selected shall, within 10 days of their selection, choose a third arbitrator from the same lists. This third arbitrator shall serve as the chairperson of the arbitration panel. If the first two arbitrators cannot agree upon the selection of the third arbitrator, the Librarian of Congress shall select the third arbitrator.

It is the Committee's expectation that the arbitrators selected will be individuals with considerable experience in the field of copyright or communications. There may, however, be circumstances where an arbitrator does not have such experience, but nevertheless has considerable experience with arbitration. The Committee does not wish to exclude such individuals from serving on a copyright arbitration panel. Given that many arbitrations will involve multiple parties, the Librarian of Congress and the Register of Copyrights must be scrupulous to avoid even the appearance of se-

lecting arbitrators that may be believed, incorrectly or not, to favor one party. Smaller claimants have expressed concern to the Committee that their interests be protected in the arbitration selection process. The purpose of providing a broad pool of potential arbitrators is to assist the Register and the Librarian in achieving a fair process.

Section 802(c) as amended concerns the conduct of the arbitration process. Section 803(a) of the current statute subjects the Copyright Royalty Tribunal to the Administrative Procedures Act. While copyright arbitration royalty panels are not agencies within the meaning of the APA, the Committee expects that all arbitration panel proceedings will be open to the public. Section 802(c), patterned after section 119(c)(3)(C), permits the arbitration panels to adopt their own procedures. The Committee does not contemplate that the panels will strictly follow the Federal Rules of Civil Procedure and Evidence, however the panels, with the assistance of the Copyright Office, must promulgate and be governed by clear procedural and evidentiary guidelines designed to ensure fundamental fairness. Rules of discovery that can expedite the parties' presentation of their cases are particularly important in this respect, since early discovery and clear evidentiary rulings can go far in facilitating settlements and a more streamlined arbitration process.

Any party participating in an arbitration proceeding may submit relevant information and proposals to the arbitrators. The entire costs of the arbitration are to be borne by the parties to the arbitration. The arbitration panel is empowered to apportion those costs as it deems appropriate in order to take into account the parties' ability to bear the costs and the parties' interest in the arbitration.

No later than 180 days after notice of the arbitration proceeding is published by the Librarian of Congress in the Federal Register, the panel shall report to the Librarian its determination of the appropriate royalty fee or distribution, as the case may be. The arbitrator's determination shall be accompanied by the written record and shall set forth the facts that the panel found relevant to its determination. A clear report setting forth the panel's reasoning and findings will greatly assist the Librarian of Congress, who upon the recommendation of the Register of Copyrights, shall adopt or reject the panel's determination within 60 days of receiving the report. The Librarian is to accept the panel's determination unless he or she finds that it is arbitrary. If the Librarian rejects the panel's determination, he or she shall, within the aforementioned 60-day period, issue an order setting the royalty fee or distribution formula. The order shall be published in the Federal Register.

Appeal of the Librarian's determination may be made to the United States Court of Appeals for the District of Columbia Circuit within 30 days of its publication in the Federal Register. If no appeal is brought within the 30-day appeals period, the Librarian's determination shall be final and the determination with respect to royalty fees or distribution of fees shall take effect as set forth in the Librarian's determination. If an appeal is made within the 30-day period, the pendency of the appeal shall not relieve any party obligated to make royalty payments under sections 111, 115, 116, 118, 119, or 1003 from making those payments.

The court of appeals is given the authority to modify or vacate the Librarian's determination only if it finds, on the basis of the record before the Librarian, that the Librarian acted in an arbitrary manner. If the court so finds, it may either modify the determination directly, or vacate the determination and remand the matter to the original arbitration panel for further proceedings.

Section 804 of the Copyright Act, which governs the time periods for the institution of proceedings, has been amended to substitute arbitration panels for the Tribunal.

Sections 805 through 810 of the Copyright Act, which govern various administrative issues with respect to the Tribunal and review of Tribunal decisions, are repealed.

SECTION 3. JUKEBOX LICENSES

Section 3 repeals existing section 116 and renumbers existing section 116A to be section 116. Section 116 contains provisions relating to the jukebox compulsory license as enacted in 1976. Section 116A contains provisions relating to the voluntary jukebox license enacted as part of the Berne Implementation Act of 1988. The parties affected by the license have voluntarily agreed to a license that is currently scheduled to expire on December 31, 1999. The agreement has provisions for automatic renewal and the Committee expects that the parties will continue the agreement in 1999, perhaps for another 10 years. In the event no such agreement is reached, however, the bill provides that copyright arbitration panels will be convened. The criteria to be used by the panels is that set forth in current section 116A (renumbered in the bill as section 116). The Committee believes this will provide an adequate safeguard to jukebox operators that they will be able to continue to perform nondramatic musical works as in the past.

SECTION 4. PUBLIC BROADCASTING LICENSE

Section 4 makes necessary technical changes to substitute arbitration panels for the Copyright Royalty Tribunal.

SECTION 5. SECONDARY TRANSMISSION BY SUPERSTATIONS AND NETWORK STATIONS FOR PRIVATE VIEWING

Section 5 makes necessary technical changes to substitute arbitration panels for the Copyright Royalty Tribunal.

SECTION 6. CONFORMING AMENDMENTS

Section 6 contains conforming amendments to take into account the substitution of arbitration panels for the Copyright Royalty Tribunal.

SECTION 7. EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

Section 7(a) establishes an effective date of January 1, 1994.

Section 7(b) states that all royalty rates and distribution determinations in existence on the effective date, whether made by the Copyright Royalty Tribunal or by voluntary agreement will remain in effect until modified by voluntary agreement or pursuant to amendments made by this Act. The purpose of this provision is to ensure that there is no disruption of existing business expectations.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of the report.

STATEMENT OF THE COMMITTEE ON GOVERNMENT OPERATIONS

No findings of recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of the rule XI of the Rules of the House of Representatives is inapplicable because the proposed legislation does not provide new budgetary authority or increase tax expenditures.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the bill will have no significant inflationary impact on prices or costs in the national economy.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 2840, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 1993.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2840, the Copyright Royalty Tribunal Reform Act of 1993, as ordered reported by the House Committee on the Judiciary on October 6, 1993. CBO estimates that implementation of H.R. 2840 would result in savings to the federal government of approximately $100,000 annually. The bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

H.R. 2840 would abolish the Copyright Royalty Tribunal (CRT) and transfer its duties to arbitration panels appointed by the Librarian of Congress. The parties to the arbitration proceedings would be required to pay the costs of those proceedings. The bill would provide for judicial review of decisions by the arbitration panels and the librarian. The bill also would transfer to the Copyright Office all unexpended balances of appropriations and would

permit the Librarian of Congress and the Copyright Office to deduct from royalty payments the costs incurred in arbitrating and distributing those payments.

The federal government collects royalty payments from cable television stations, jukebox operators, satellite carriers, and digital audio services, and distributes them to copyright owners. Under current law, the CRT receives an appropriation of approximately $1 million for this purpose, of which $900,000 is reimbursed from royalty payments prior to their distribution. Thus, the net cost to the federal government for operating the CRT is about $100,000 a year. Under H.R. 2840, the CRT would be eliminated. The costs of distributing copyright royalties would be borne by the Copyright Office and would be paid out of the royalty collections before they are disbursed. The net costs to the government of operating the new system would be zero. Therefore, CBO estimates that implementation of H.R. 2840 would result in a savings to the federal government of approximately $100,000 annually.

CBO estimates that enactment of H.R. 2840 would result in no cost to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John Webb.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Title 17, United States Code

* * * * * * *

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

Sec.
101. Definitions.

* * * * * * *

[116. Scope of exclusive rights in nondramatic musical works: Compulsory licenses for public performances by means of coin-operated phonorecord players.
[116A.] *116.* Negotiated licenses for public performances by means of coin-operated phonorecord players.

* * * * * * *

111. LIMITATIONS ON EXCLUSIVE RIGHTS: SECONDARY TRANSMISSIONS

(a) * * *

* * * * * * *

(d) COMPULSORY LICENSE FOR SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) A cable system whose secondary transmissions have been subject to compulsory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights, in

accordance with requirements that the Register shall[, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),] prescribe by regulation—

(A) a statement of account, covering the six months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, and such other data as the Register of Copyrights may[, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),] from time to time prescribe by regulation. In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing pursuant to section 119. Such statement shall also include a special statement of account covering any nonnetwork television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs shewing the times, dates, stations, and programs involved in such substituted or added carriage; and

(B) * * *

* * * * * * *

(2) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. [All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title. The Register shall submit to the Copyright Royalty Tribunal, on a semiannual basis, a compilation of all statements of account covering the relevant six-month period provided by clause (1) of this subsection.] ***All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Librarian of Congress in the event no controversy over distribution exists, or by a copyright arbitration royalty panel in the event a controversy over such distribution exists.***

* * * * * * *

(4) The royalty fees thus deposited shall be distributed in accordance with the following procedures:

(A) During the month of July in each year, every person claiming to be entitled to compulsory license fees for secondary transmissions shall file a claim with the [Copyright Royalty Tribunal] *Librarian of Congress*, in accordance with requirements that the [Tribunal] *Librarian of Congress* shall prescribe by regulation. Notwithstanding any provisions of the antitrust laws, for purposes of this clause any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

[(B) After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.]

(B) After the first day of August of each year, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian determines that no such controversy exists, the Librarian shall, after deducting reasonable administrative costs under this section, distribute such fees to the copyright owners entitled to such fees, or to their designated agents. If the Librarian finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty fees.

(C) During the pendency of any proceeding under this subsection, the [Copyright Royalty Tribunal] *Librarian of Congress* shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

* * * * * * *

[§ 116. Scope of exclusive rights in nondramatic musical works; Compulsory license for public performances by means of coin-operated phonorecord players

[(a) LIMITATION ON EXCLUSIVE RIGHTS.—In the case of a nondramatic musical work embodied in a phonorecord, the performance of which is subject to this section as provided in section 116A, the exclusive right under clause (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited as follows:

[(1) The proprietor of the establishment in which the public performance takes place is not liable for infringement with respect to such public performance unless—

[(A) such proprietor is the operator of the phonorecord player; or

[(B) such proprietor refuses or fails, within one month after receipt by registered or certified mail of a request, at a time during which the certificate required by clause (1)(C) of subsection (b) is not affixed to the phonorecord player, by the copyright owner, to make full disclosure, by registered or certified mail, of the identity of the operator of the phonorecord player.

[(2) The operator of the coin-operated phonorecord player may obtain a compulsory license to perform the work publicly on that phonorecord player by filing the application, affixing the certificate, and paying the royalties provided by subsection (b).

[(b) RECORDATION OF COIN-OPERATED PHONORECORD PLAYER, AFFIXATION OF CERTIFICATE, AND ROYALTY PAYABLE UNDER COMPULSORY LICENSE.—

[(1) Any operator who wishes to obtain a compulsory license for the public performance of works on a coin-operated phonorecord player shall fulfill the following requirements:

[(A) Before or within one month after such performances are made available on a particular phonorecord player, and during the month of January in each succeeding year that such performances are made available on that particular phonorecord player, the operator shall file in the Copyright Office, in accordance with requirements that the Register of Copyrights, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), shall prescribe by regulation, an application containing the name and address of the operator of the phonorecord player and the manufacturer and serial number or other explicit identification of the phonorecord player, and deposit with the Register of Copyrights a royalty fee for the current calendar year of $8 for that particular phonorecord player. If such performances are made available on a particular phonorecord player for the first time after July 1 of any year, the royalty fee to be deposited for the remainder of that year shall be $4.

[(B) Within twenty days of receipt of an application and royalty fee pursuant to subclause (A), the Register of Copyrights shall issue to the applicant a certificate for the phonorecord player.

[(C) On or before March 1 of the year in which the certificate prescribed by subclause (B) of this clause is issued, or within ten days after the date of issue of the certificate, the operator shall affix to the particular phonorecord player, in a position where it can be readily examined by the public, the certificate, issued by the Register of Copyrights under subclause (B), of the latest application made by such operator under subclause (A) of this clause with respect to that phonorecord player.

[(2) Failure to file the application, to affix the certificate, or to pay the royalty required by clause (1) of this subsection renders the public performance actionable as an act of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

[(c) DISTRIBUTION OF ROYALTIES.—

[(1) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title. The Register shall submit to the Copyright Royalty Tribunal on an annual basis, a detailed statement of account covering all fees received for the relevant period provided by subsection (b).

[(2) During the month of January in each year, every person claiming to be entitled to compulsory license fees under this section for performances during the preceding twelve-month period shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. Such claim shall include an agreement to accept as final, except as provided in section 810 of this title, the determination of the Copyright Royalty Tribunal in any controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b)(1) of this section to which the claimant is a party. Notwithstanding any provisions of the antitrust laws, for purposes of this subsection any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may jump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

[(3) After the first day of October of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b)(1). If the Tribunal determines that no such controversy exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If it finds that such a controversy exists, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

[(4) The fees to be distributed shall be divided as follows:

[(A) to every copyright owner not affiliated with a performing rights society, the pro rata share of the fees to be distributed to which such copyright owner proves entitlement.

[(B) to the performing rights societies, the remainder of the fees to be distributed in such pro rata shares as they shall by agreement stipulate among themselves, or, if they

fail to agree, the pro rata share to which such performing rights societies prove entitlement.

[(C) during the pendency of any proceeding under this section, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

[(5) The Copyright Royalty Tribunal shall promulgate regulations under which persons who can reasonably be expected to have claims may, during the year in which performances take place, without expense to or harassment of operations or proprietors of establishments in which phonorecord players are located, have such access to such establishments and to the phonorecord players located therein and such opportunity to obtain information with respect thereto as may be reasonably necessary to determine, by sampling procedures or otherwise, the proportion of contribution of the musical works of each such person to the earnings of the phonorecord players for which fees shall have been deposited. Any person who alleges that he or she has been denied the access permitted under the regulations prescribed by the Copyright Royalty Tribunal may bring an action in the United States District Court for the District of Columbia for the cancellation of the compulsory license of the phonorecord player to which such access has been denied, and the court shall have the power to declare the compulsory license thereof invalid from the date of issue thereof.

[(d) CRIMINAL PENALTIES.—Any person who knowingly makes a false representation of a material fact in an application filed under clause (1)(A) of subsection (b), or who knowingly alters a certificate issued under clause (1)(B) of subsection (b) or knowingly affixes such a certificate to a phonorecord player other than the one it covers, shall be fined not more than $2,500.

[(e) DEFINITIONS—As used in this section and section 116A, the following terms and their variant forms mean the following:

[(1) A "coin-operated phonorecored player" is a machine or device that—

[(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by insertion of coins, currency, tokens, or other monetary units or their equivalent;

[(B) is located in an establishment making no direct or indirect charge for admission;

[(C) is accompanied by a list of the titles of all the musical works available for performance on it, which list is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

[(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

[(2) An "operator" is any person who, alone or jointly with others:

[(A) owns a coin-operated phonorecord player; or

[(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

[(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

[(3) A "performing rights society" is an association or co-operation that licenses to public performance of nondramatic musical works on behalf of the copyright owners, such as the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.

[§116A.] *§116.* Negotiated licenses for public performances by means of coin-operated phonorecord players

(a) APPLICABILITY OF SECTION.—This section applies to any nondramatic musical work embodied in a phonorecord.

[(b) LIMITATION ON EXCLUSIVE RIGHT IF LICENSES NOT NEGOTIATED.—

[(1) APPLICABILITY.—In the case of a work to which this section applies, the exclusive right under clause (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited by section 116 to the extent provided in this section.

[(2) DETERMINATION BY COPYRIGHT ROYALTY TRIBUNAL.—The Copyright Royalty Tribunal at the end of the 1-year period beginning on the effective date of the Berne Convention Implementation Act of 1988, and periodically thereafter to the extent necessary to carry out subsection (f), shall determine whether or not negotiated licenses authorized by subsection (c) are in effect so as to provide permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending on the effective date of that Act. If the Copyright Royalty Tribunal determines that such negotiated licenses are not so in effect, the Tribunal shall, upon making the determination, publish the determination in the Federal Register. Upon such publication, section 116 shall apply with respect to musical works that are not subject of such negotiated licenses.

[(c)] *(b)* NEGOTIATED LICENSES.—

(1) AUTHORITY OF NEGOTIATIONS.—Any owners of copyright works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

(2) ARBITRATION.—Parties to such a negotiation, within such time as may be specified by the [Copyright Royalty Tribunal] *Librarian of Congress* by regulation, may determine the result of the negotiation by arbitration. Such arbitration shall be governed by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties shall give notice to the [Copyright Royalty Tribunal] *Librarian of Congress* of any

determination reached by arbitration and any such determination shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.

[(d)] *(c)* LICENSE AGREEMENTS SUPERIOR TO COPYRIGHT [ROYALTY TRIBUNAL] *ARBITRATION ROYALTY PANEL* DETERMINATIONS.—License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection [(c)] *(b)*, shall be given effect in lieu of any otherwise applicable determination by [the Copyright Royalty Tribunal] *a copyright arbitration panel*.

[(e) NEGOTIATION SCHEDULE.—Not later than 60 days after the effective date of the Berne Convention Implementation Act of 1988, if the Chairman of the Copyright Royalty Tribunal has not received notice, from copyright owners and operators of coin-operated phonorecord players referred to in subsection (c)(1), of the date and location of the first meeting between such copyright owners and such operators to commence negotiations authorized by subsection (c), the Chairman shall announce the date and location of such meeting. Such meeting may not be held more than 90 days after the effective date of such Act.

[(f) COPYRIGHT ROYALTY TRIBUNAL TO SUSPEND VARIOUS ACTIVITIES.—The Copyright Royalty Tribunal shall not conduct any ratemaking activity with respect to coin-operated phonorecord players unless, at any time more than one year after the effective date of the Berne Convention Implementation Act of 1988, the negotiated licenses adopted by the parties under this section do not provide permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on the coin-operated phonorecord players during the one-year peried ending on the effective date of such Act.

[(g) TRANSITION OF PROVISIONS; RETENTION OF COPYRIGHT ROYALTY TRIBUNAL JURISDICTION.—Until such time as licensing provisions are determined by the parties under this section, the terms of the compulsory license under section 116, with respect to the public performance of nondramatic musical works by means of coin-operated phonerecord players, which is in effect on the day before the effective date of the Berne Convention Implementation Act of 1988, shall remain in force. If a negotiated license authorized by this section comes into force so as to supersede previous determinations of the Copyright Royalty Tribunal, as provided in section (d), but thereafter is terminated or expires and is not replaced by another licensing agreement, then section 116 shall be effective with respect to musical works that were the subject of such terminated or expired licenses.]

* * * * * * *

§ 118. Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting

(a) * * *

(b) [Not later than thirty days after the Copyright Royalty Tribunal has been constituted in accordance with section 802, the Chairman of the Tribunal shall cause notice to be published in the Federal Register of the initiation of proceedings for the purpose of de-

termining reasonable terms and rates of royalty payments for the activities specified by subsection (d) with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works during a period beginning as provided in clause (3) of this subsection and ending on December 31, 1982. Copyright owners and public broadcasting entities shall negotiate in good faith and cooperate fully with the Tribunal in an effort to reach reasonable and expeditious results.] Notwithstanding any provision of the antitrust laws, any owners of copyright in [works specified by this subsection] *published nondramatic musical works and published pictorial, graphic, and sculptural works* and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.

(1) Any owner of copyright in a work specified in this subsection or any public broadcasting entity may[, within one hundred and twenty days after publication of the notice specified in this subsection,] submit to the [Copyright Royalty Tribunal] *Librarian of Congress* proposed licenses covering such activities with respect to such works. The [Copyright Royalty Tribunal] *Librarian of Congress* shall proceed on the basis of the proposals submitted to it as well as any other relevant information. The [Copyright Royalty Tribunal] *Librarian of Congress* shall permit any interested party to submit information relevant to such proceedings.

(2) License agreements, voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the [Tribunal] *Librarian of Congress*: *Provided*, That copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe.

(3) [Within six months, but not earlier than one hundred and twenty days, from the date of publication of the notice specified in this subsection the Copyright Royalty Tribunal shall make a determination and publish in the Federal Register a schedule of rates and terms which, subject to clause (2) of this subsection, shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether or not such copyright owners and public broadcasting entities have submitted proposals to the Tribunal.] *In the absence of license agreements negotiated under paragraph (2), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress.* In establishing such rates and terms the [Copyright Royalty Tribunal] *copyright arbitration royalty panel* may consider the rates for comparable circumstances

under voluntary license agreements negotiated as provided in [clause (2) of this subsection] *paragraph (2)*. The [Copyright Royalty Tribunal] *Librarian of Congress* shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept by public broadcasting entities.

[(4) With respect to the period beginning on the effective date of this title and ending on the date of publication of such rates and terms, this title shall not afford to owners of copyright or public broadcasting entities any greater or lesser rights with respect to the activities specified in subsection (d) as applied to works specified in this subsection than those afforded under the law in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.]

(c) The initial procedure specified in subsection (b) shall be repeated and concluded between June 30 and December 31, [1982] *1997*, and at five-year intervals thereafter, in accordance with regulations that the [Copyright Royalty Tribunal] *Librarian of Congress* shall prescribe.

(d) Subject [to the transitional provisions of subsection (b)(4), and] to the terms of any voluntary license agreements that have been negotiated as provided by subsection (b)(2), a public broadcasting entity may, upon compliance with the provisions of this section, including the rates and terms established by [the Copyright Royalty Tribunal] *a copyright arbitration royalty panel* under subsection (b)(3), engage in the following activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works:

(1) performance or display of a work by or in the course of a transmission made by a noncommercial educational broadcast station referred to in subsection (g); and

(2) production of a transmission program, reproduction of copies or phonorecords of such a transmission program, an distribution of such copies or phonorecords, where such production, reproduction, or distribution is made by a nonprofit institution or organization solely for the purpose of transmissions specified in [clause] *paragraph* (1); and

(3) the making of reproductions by a governmental body or a nonprofit institution of a transmission program simultaneously with its transmission as specified in [clause] *paragraph* (1), and the performance or display of the contents of such program under the conditions specified by [clause] *paragraph* (1) of section 110, but only if the reproductions are used for performances or displays for a period of no more than seven days from the date of the transmission specified in [clause] *paragraph* (1), and are destroyed before or at the end of such period. No person supplying, in accordance with [clause] *paragraph* (2), a reproduction of a transmission program to governmental bodies or nonprofit institutions under this [clause] *paragraph* shall have any liability as a result of failure of such body or institution to destroy such reproduction: *Provided*, That it shall have notified such body or institution of the re-

quirement for such destruction pursuant to this [clause] *paragraph*: *And provided further,* That if such body or institution itself fails to destroy such reproduction it shall be deemed to have infringed.

* * * * * * *

(g) As used in this section, the term "public broadcasting entity" means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in [clause] *paragraph* (2) of subsection (d).

§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) * * *

(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

(1) DEPOSITS WITH THE REGISTER OF COPY-RIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall[, after consultation with the Copyright Royalty Tribunal,] prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may[, after consultation with the Copyright Royalty Tribunal,] from time to time prescribe by regulation; and

(B) * * *

(2) INVESTMENT OF FEES.—The Rogister of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the [Copyright Royalty Tribunal] *Librarian of Congress* as provided by this title.

(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the [Copyright Royalty Tribunal] *Librarian of Congress* under paragraph (4).

(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the [Copyright Royalty Tribunal] *Librarian of Congress*, in accordance with requirements that the [Tribunal] *Librarian of Congress* shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the [Copyright Royalty Tribunal] *Librarian of Congress* shall determine whether there exists a controversy concerning the distribution of royalty fees. If the [Tribunal] *Librarian of Congress* determines that no such controversy exists. The [Tribunal] *Librarian of Congress* shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the [Tribunal] *Librarian of Congress* finds the existence of a controversy, the [Tribunal] *Librarian of Congress* shall, pursuant to chapter 8 of this title, [conduct a proceeding] *convene a copyright arbitration royalty panel* to determine the distribution of royalty fees.

(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the [Copyright Royalty Tribunal] *Librarian of Congress* shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(c) [DETERMINATION] *ADJUSTMENT* OF ROYALTY FEES.—

(1) * * *

(2) FEE SET BY VOLUNTARY NEGOTIATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before July 1, 1991, the [Copyright Royalty Tribunal] *Librarian of Congress* shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

(B) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common

agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the [Copyright Royalty Tribunal] *Librarian of Congress* shall do so, after requesting recommendations for the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire costs thereof.

* * * * * * *

(3) FEE SET BY COMPULSORY ARBITRATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before December 31, 1991, the [Copyright Royalty Tribunal] *Librarian of Congress* shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the copyright Office in accordance with paragraph (2). [Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select.] *Such arbitration proceeding shall be conducted under chapter 8.*

[(B) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by copyright owners who claim to be entitled to royalty fees under subsection (b)(4) and who are not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2) and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement. The two arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators. If either group fail to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fail to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively. The arbitrators selected under this subparagraph shall constitute an Arbitration Panel.

[(C) ARBITRATION PROCEEDING.—The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4), any satellite carrier, and any distributor, who is not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

[(D)] (*B*) FACTORS FOR DETERMINING ROYALTY FEES.—In determining royalty fees under this paragraph, the [Arbitration Panel] *copyright arbitration royalty panel appointed under chapter 8* shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing. The fee shall also be calculated to achieve the following objectives:

(i) * * *

* * * * * * *

[(E) REPORT TO COPYRIGHT ROYALTY TRIBUNAL.—Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D).

[(F) ACTION BY COPYRIGHT ROYALTY TRIBUNAL.—Within 60 days after receiving the report of the Arbitration Panel under subparagraph (E), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in subparagraph (D). If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph. The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence). The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate. The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying.

[(G) PERIOD DURING WHICH DECISION OF PANEL OR ORDER OF TRIBUNAL EFFECTIVE.— The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become effective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F),

and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994.]

(C) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

(i) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(e), or

(ii) is established by the Librarian of Congress under section 802(e),

shall become effective as provided in section 802(f).

[(H)] *(D)* PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee [adopted or ordered under subparagraph (F)] *referred to in subparagraph (C)* shall be binding on all satellite carriers, distributors, and copyright owners, who are not a party to a voluntary agreement filed with the Copyright Office under paragraph (2).

[(4) JUDICIAL REVIEW.—Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. The pendency of an appeal under this paragraph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royalty fees specified in that subsection. The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in paragraph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner. If the court modified the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3).]

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CHAPTER 8—COPYRIGHT ROYALTY TRIBUNAL

[809. Effective date of final determinations.
[810. Judicial review.]

[§ 801. Copyright Royalty Tribunal: Establishment and purpose

[(a) There is hereby created an independent Copyright Royalty Tribunal in the legislative branch.]

§ 801. Copyright arbitration royalty panels: establishment and purpose

(a) ESTABLISHMENT.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, is authorized to appoint and convene copyright arbitration royalty panels.

(b) *PURPOSES.*—Subject to the provisions of this chapter, the purposes of the [Tribunal] *copyright arbitration royalty panels* shall be—

(1) * * *

(2) to make determinations concerning the adjustment of the copyright royalty rates in section 111 solely in accordance with the following provisions:

(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect (i) national monetary inflation or deflation or (ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of enactment of this Act: *Provided*, That if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted: *And provided further*, That no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber. The [Commission] *copyright arbitration royalty panels* may consider all factors relating to the maintenance of such level of payments including, as an extenuating factor, whether the cable industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the [Copyright Royalty Tribunal]

copyright arbitration royalty panels shall consider, among other factors, the economic impact on copyright owners and users: *Provided*, That no adjustment in royalty rates shall be made under this subclause with respect to any distant signal equivalent or fraction thereof represented by (i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or (ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

(3) to distribute royalty fees deposited with the Register of Copyrights under sections 111, 116, and 119(b), and to determine, in cases where controversy exists, the distribution of such fees; and

[In determining whether a return to a copyright owner under section 116 is fair, appropriate weight shall be given to—

[(i) the rates previously determined by the Tribunal to provide a fair return to the copyright owner, and

[(ii) the rates contained in any license negotiated pursuant to section 116A of this title.]

(4) to distribute royalty payments deposited with the Register of Copyrights under section 1003, [to determine the distribution of such payments, and to carry out its other responsibilities under chapter 10] *and to determine the distribution of such payments*.

[(c) As soon as possible after the date of enactment of this Act, and no later than six months following such date, the President shall publish a notice announcing the initial appointments provided in section 802, and shall designate an order of seniority among the initially-appointed commissioners for purposes of section 802(b).]

(c) RULINGS.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, may, before a copyright arbitration royalty panel is convened, make any necessary procedural or evidentiary rulings that would apply to the proceedings conducted by such panel.

[§ 802. Membership of the Tribunal

[(a) The Tribunal shall be composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as a Commissioner shall be seven years, except that a Commissioner may serve after the expiration of his or her term until a successor has taken office. Each Commissioner shall be compensated at the rate of pay in effect for level V of the Executive Schedule under section 5316 of title 5.

[(b) Upon convening the commissioners shall elect a chairman from among the commissioners appointed for a full seven-year term. Such chairman shall serve for a term of one year. Thereafter, the most senior commissioner who has not previously served as

chairman shall serve as chairman for a period of one year, except that, if all commissioners have served a full term as chairman, the most senior commissioner who has served the least number of terms as chairman shall be designated as chairman.

[(c) Any vacancy in the Tribunal shall not affect its powers and shall be filled, for the unexpired term of the appointment, in the same manner as the original appointment was made.

[§ 803. Procedures of the Tribunal

[(a) The Tribunal shall adopt regulations, not inconsistent with law, governing its procedure and methods of operation. Except as otherwise provided in this chapter, the Tribunal shall be subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended (c. 324, 60 Stat. 237, title 5, United States Code, chapter 5, subchapter II and chapter 7).

[(b) Every final determination of the Tribunal shall be published in the Federal Register. It shall state in detail the criteria that the Tribunal determined to be applicable to the particular proceeding, the various facts that it found relevant to its determination in that proceeding, and the specific reasons for its determination.]

§ 802. Membership and proceedings of copyright arbitration royalty panels

(a) COMPOSITION OF COPYRIGHT ARBITRATION ROYALTY PANELS.—A copyright arbitration royalty panel shall consist of 3 arbitrators selected by the Librarian of Congress pursuant to subsection (b).

(b) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of a notice initiating an arbitration proceeding under section 804, and in accordance with procedures specified by the Register of Copyrights, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, select 2 arbitrators from lists of arbitrators provided to the Librarian by parties participating in the arbitration and by professional arbitration associations or such similar organizations as the Librarian shall select. The 2 arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same lists, who shall serve as the chairperson of the arbitrators. If such 2 arbitrators fail to agree upon the selection of a third arbitrator, the Librarian of Congress shall promptly select the third arbitrator.

(c) ARBITRATION PROCEEDINGS.—Copyright arbitration royalty panels shall conduct arbitration proceedings, in accordance with such procedures as they may adopt, for the purpose of making their determinations in carrying out the purposes set forth in section 801. The arbitration panels shall act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c). Any copyright owner who claims to be entitled to royalties under section 111, 116, or 119, or any interested copyright party who claims to be entitled to royalties under section 1006, may submit relevant information and proposals to the arbitration panels in proceedings applicable to such copyright owner or interested copyright party, and any other person participating in arbitration proceedings may submit such relevant information and proposals to the arbitration panel conducting the

proceedings. The parties to the proceedings shall bear the entire cost thereof in such manner and proportion as the arbitration panels shall direct.

(d) REPORT TO THE LIBRARIAN OF CONGRESS.—Not later than 180 days after publication of the notice initiating an arbitration proceeding, the copyright arbitration royalty panel conducting the proceeding shall report to the Librarian of Congress its determination concerning the royalty fee or distribution of royalty fees, as the case may be. Such report shall be accompanied by the written record, and shall set forth the facts that the arbitration panel found relevant to its determination.

(e) ACTION BY LIBRARIAN OF CONGRESS.—Within 60 days after receiving the report of a copyright arbitration royalty panel under subsection (d), the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt or reject the determination of the arbitration panel. The Librarian shall adopt the determination of the arbitration panel unless the Librarian finds that the determination is arbitrary. If the Librarian rejects the determination of the arbitration panel, the Librarian shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be. The Librarian shall cause to be published in the Federal Register the determination of the arbitration panel, and the decision of the Librarian (including an order issued under the preceding sentence). The Librarian shall also publicize such determination and decision in such other manner as the Librarian considers appropriate. The Librarian shall also make the report of the arbitration panel and the accompanying record available for public inspection and copying.

(f) JUDICIAL REVIEW.—Any decision of the Librarian of Congress under subsection (e) with respect to a determination of an arbitration panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. If no appeal is brought within such 30-day period, the decision of the Librarian is final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in the decision. The pendency of an appeal under this paragraph shall not relieve persons obligated to make royalty payments under section 111, 115, 116, 118, 119, or 1003 who would be affected by the determination on appeal to deposit the statement of account and royalty fees specified in those sections. The court shall have jurisdiction to modify or vacate a decision of the Librarian only if it finds, on the basis of the record before the Librarian, that the Librarian acted in an arbitrary manner. If the court modifies the decision of the Librarian, the court shall have jurisdiction to enter its own determination with respect to the amount or distribution of royalty fees and costs, to order the repayment of any excess fees, and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the arbitration panel and remand the case for arbitration proceedings in accordance with subsection (c).

(g) ADMINISTRATIVE MATTERS.—

(1) DEDUCTION OF COSTS FROM ROYALTY FEES.—The Librarian of Congress and the Register of Copyrights may, to the extend not otherwise provided under this title, deduct from royalty fees deposited or collected under this title the reasonable costs incurred by the Library of Congress and the Copyright Office under this chapter. Such deduction may be made before the fees are distributed to any copyright claimants.

(2) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 115, 116, 118, or 119 or chapter 10.

§ 804. Institution and conclusion of proceedings

[(a) With respect to proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in sections 115 and 116, and with respect to proceedings under section 801(b)(2)(A) and (D)—

[(1) on January 1, 1980, the Chairman of the Tribunal shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter; and

[(2) during the calendar years specified in the following schedule, any owner or user of a copyrighted work whose royalty rates are specified by this title, or by a rate established by the Tribunal, may file a petition with the Tribunal declaring that the petitioner requests an adjustment of the rate. The tribunal shall make a determination as to whether the applicant has a significant interest in the royalty rate in which an adjustment is requested. If the Tribunal determines that the petitioner has a significant interest, the Chairman shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with notice of commencement of proceedings under this chapter.

[(A) In proceedings under section 801(b)(2)(A) and (D), such petition may be filed during 1985 and in each subsequent fifth calendar year.

[(B) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, such petition may be filed in 1987 and in each subsequent tenth calendar year.

[(C)(i) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 116, such petition may be filed in 1990 and in each subsequent tenth calendar year, and at any time within 1 year after negotiated licenses authorized by section 116A are terminated or expire and are not replaced by subsequent agreements.

[(ii) If negotiated licenses authorized by section 116A come into force so as to supersede previous determinations of the Tribunal, as provided in section 116A(d), but thereafter are terminated or expire and are not replaced by subsequent agreements, the Tribunal shall, upon petition of any party to such terminated or expired negotiated license

agreement, promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such interim royalty rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116A(d).]

(a)(1) With respect to proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in sections 115 and 116, and with respect to proceedings under subparagraphs (A) and (D) of section 801(b)(2), during the calendar years specified in the schedule set forth in paragraphs (2), (3), and (4), any owner or user of a copyrighted work whose royalty rates are specified by this title, established by the Copyright Royalty Tribunal before the date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, or established by a copyright arbitration royalty panel after such date of enactment, may file a petition with the Librarian of Congress declaring that the petitioner requests an adjustment of the rate. The Librarian of Congress shall, upon the recommendation of the Register of Copyrights, make a determination as to whether the petitioner has such a significant interest in the royalty rate in which an adjustment is requested. If the Librarian determines that the petitioner has such a significant interest, the Librarian shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter.

(2) In proceedings under section 801(b)(2)(A) and (D), a petition described in paragraph (1) may be filed during 1995 and in each subsequent fifth calendar year.

(3) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, a petition described in paragraph (1) may be filed in 1997 and in each subsequent tenth calendar year.

(4)(A) In proceedings under section 801 (b)(1) concerning the adjustment of royalty rates as provided in section 116, a petition described in paragraph (1) may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Librarian of Congress shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, convene a copyright arbitration royalty panel. The arbitration panel shall promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of non-dramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last

such rate or rates and shall remain in force until the conclusion of proceedings by the arbitration panel, in accordance with section 802, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

(b) With respect to proceedings under [subclause] *subparagraph* (B) or (C) of section 801(b)(2), following an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established by the [Tribunal] *Copyright Royalty Tribunal or the Librarian of Congress*, may, within twelve months, file a petition with the [Tribunal] *Librarian* declaring that the petitioner requests an adjustment of the rate. In this event the [Tribunal] *Librarian* shall proceed as in subsection [(a)(2), above] *(a) of this section*. Any change in royalty rates made by the [Tribunal] *Copyright Royalty Tribunal or the Librarian of Congress* pursuant to this subsection may be reconsidered in 1980, 1985, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(2)(B) or (C), as the case may be.

(c) With respect to proceedings under section 801(b)(1), concerning the determination of reasonable terms and rates of royalty payments as provided in section 118, the [Tribunal] *Librarian of Congress* shall proceed when and as provided by that section.

(d) With respect to proceedings under section 801(b)(3) or (4), concerning the distribution of royalty fees in certain circumstances under section 111, 116, 119, or 1007, the [Chairman of the Tribunal] *Librarian of Congress* shall, upon [determination by the Tribunal] *a determination* that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

[(e) All proceedings under this chapter shall be initiated without delay following publication of the notice specified in this section, and the Tribunal shall render its final decision in any such proceeding within one year from the date of such publication.

[§ 805. Staff of the Tribunal

[(a) The Tribunal is authorized to appoint and fix the compensation of such employees as may be necessary to carry out the provisions of this chapter, and to prescribe their functions and duties.

[(b) The Tribunal may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5.

[§ 806. Administrative support of the Tribunal

[(a) The Library of Congress shall provide the Tribunal with necessary administrative services, including those related to budgeting, accounting, financial reporting, travel, personnel, and procurement. The Tribunal shall pay the Library for such services, either in advance or by reimbursement from the funds of the Tribunal, at amounts to be agreed upon between the Librarian and the Tribunal.

[(b) The Library of Congress is authorized to disburse funds for the Tribunal, under regulations prescribed jointly by the Librarian of Congress and the Tribunal and approved by the Comptroller General. Such regulations shall establish requirements and proce-

dures under which every voucher certified for payment by the Library of Congress under this chapter shall be supported with a certification by a duly authorized officer or employee of the Tribunal, and shall prescribe the responsibilities and accountability of said officers and employees of the Tribunal with respect to such certifications.

[§ 807. Deduction of costs of proceedings

[Before any funds are distributed pursuant to a final decision in a proceeding in question. Where the proceeding involving distribution of royalty fees, the Tribunal shall assess the reasonable costs of such proceeding.

[§ 808. Reports

[In addition to its publication of the reports of all final determinations as provided in section 803(b), the Tribunal shall make an annual report to the President and the Congress concerning the Tribunal's work during the preceding fiscal year, including a detailed fiscal statement of account.

[§ 809. Effective date of final determinations

[Any final determination by the Tribunal under this chapter shall become effective thirty days following its publication in the Federal Register as provided in section 803(b), unless prior to that time an appeal has been filed pursuant to section 810, to vacate, modify, or correct such determination, and notice of such appeal has been served on all parties who appeared before the Tribunal in the proceeding in question. Where the proceeding involves the distribution of royalty fees under sections[3] 111 or 116, the Tribunal shall, upon the expiration of such thirty-day period, distribute any royalty fees not subject to an appeal filed pursuant to section 810.

[§ 810. Judicial review

[Any final decision of the Tribunal in a proceeding under section 801(b) may be appealed to the United States Court of Appeals, within thirty days after its publication in the Federal Register by an aggrieved party. The judicial review of the decision shall be had, in accordance with chapter 7 of title 5, on the basis of the record before the Tribunal. No court shall have jurisdiction to review a final decision of the Tribunal except as provided in this section.]

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CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

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Subchapter C—Royalty Payments

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§ 1004. Royalty payments

(a) DIGITAL AUDIO RECORDING DEVICES.—

(1) * * *

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(3) LIMITS ON ROYALTIES.—Notwithstanding paragraph (1) or (2), the amount of the royalty payment for each digital audio recording device shall not be less than $1 nor more than the royalty maximum. The royalty maximum shall be $8 per device, except that in the case of a physically integrated unit containing more than 1 digital audio recording device, the royalty maximum for such unit shall be $12. During the 6th year after the effective date of this chapter, and not more than once each year thereafter, any interested copyright party may petition the [Copyright Royalty tribunal] *Librarian of Congress* to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the [Tribunal] *Librarian of Congress* shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum; however the amount of any such increase as a percentage of the royalty maximum shall in no event exceed the percentage increase in the Consumer Price Index during the period under review.

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§ 1005. Deposit of royalty payments and deduction of expenses

The Register of Copyrights shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States as offsetting receipts, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1007. The Register may, in the Register's discretion, 4 years after the close of any calendar year, close out the royalty payments account for that calendar year, and may treat my funds remaining in such account and any subsequent deposits that would other wise be attributable to that calendar year as attributable to the succeeding calendar year. [The Register shall submit to the Copyright Royalty Tribunal, on a monthly basis, a financial statement reporting the account of royalties under this chapter that are available for distribution.]

§ 1006. Entitlement to royalty payments

(a) * * *

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(c) ALLOCATION OF ROYALTY PAYMENT WITHIN GROUPS.—If all interested copyright parties within a group specified in subsection (b) do not agree on a voluntary proposal for the distribution of the royalty payments within each group, the [Copyright Royalty Tribunal] *Librarian of Congress shall convene a copyright arbitration royalty panel which* shall, pursuant to the procedures specified

under section 1007(c), allocate royalty payments under this section based on the extent to which, during the relevant period—

(1) * * *

* * * * * * *

§ 1007. Procedures for distributing royalty payments

(a) FILING OF CLAIMS AND NEGOTIATIONS—

(1) FILING OF CLAIMS.—During the first 2 months of each calendar year after the calendar year in which this chapter takes effect, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the [Copyright Royalty Tribunal] *Librarian of Congress* a claim for payments collected during the preceding year in such form and manner as the [Tribunal] *Librarian of Congress* shall prescribe by regulation.

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(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—Within 30 days after the period established for the filing of claims under subsection (a), in each year after the year in which this section takes effect, the [Copyright Royalty Tribunal] *Librarian of Congress* shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the [Tribunal] *Librarian of Congress* determines that no such controversy exists, the [Tribunal] *Librarian of Congress.* shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a) after deducting its reasonable administrative costs under this section.

(c) RESOLUTION OF DISPUTES.—[If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments.] *If the Librarian of Congress finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty payments.* During the pendency of such a proceeding, the [Tribunal] *Librarian of Congress* shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The [Tribunal] *Librarian of Congress* shall, before authorizing the distribution of such royalty payments, deduct [its reasonable administrative costs] *the reasonable administrative cost incurred by the Librarian* under this section.

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Subchapter D—Prohibition on Certain Infringement Actions, Remedies, and Arbitration

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§ 1010. Arbitration of certain disputes

(a) * * *

(b) INITIATION OF ARBRITATION PROCEEDINGS.—Parties agreeing to such arbitration shall file a petition with the [Copyright Royalty Tribunal] *Librarian of Congress* requesting the commencement of an arbitration proceeding. The petition may include the names and qualifications of potential arbitrators. Within 2 weeks after receiving such a petition, the [Tribunal] *Librarian of Congress* shall cause notice to be published in the Federal Register of the initiation of an arbitration proceeding. Such notice shall include the names and qualifications of 3 arbitrators chosen by the [Tribunal] *Librarian of Congress* from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the [Tribunal] *Librarian of Congress* shall select, and from potential arbitrators listed in the parties' petition. The arbitrators selected under this subsection shall constitute an Arbitration Panel.

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(e) REPORT TO [COPYRIGHT ROYALTY TRIBUNAL] *LIBRARIAN OF CONGRESS.*—Not later than 60 days after publication of the notice under subsection (b) of the initiation of an arbitration proceeding, the Arbitration Panel shall report to the [Copyright Royalty Tribunal] *Librarian of Congress* its determination concerning whether the device concerned is subject to section 1002, or the basis on which royalty payments for the device are to be made under section 1003. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination.

(f) ACTION BY THE [COPYRIGHT ROYALTY TRIBUNAL] *LIBRARIAN OF CONGRESS.*—Within 60 days after receiving the report of the Arbitration Panel under subsection (e), the [Copyright Royalty Tribunal] *Librarian of Congress* shall adopt or reject the determination of the Panel. The [Tribunal] *Librarian of Congress* shall adopt the determination of the Panel unless the [Tribunal] *Librarian of Congress* finds that the determination is clearly erroneous. If the [Tribunal] *Librarian of Congress* rejects the determination of the Panel, the [Tribunal] *Librarian of Congress* shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting forth [its] *the Librarian's* decision and the reasons therefor. The [Tribunal] *Librarian of Congress* shall cause to be published in the Federal Register the determination of the Panel and the decision of the [Tribunal] *Librarian of Congress* under this subsection with respect to the determination (including any order issued under the preceding sentence).

(g) JUDICIAL REVIEW.—Any decision of the [Copyright Royalty Tribunal] *Librarian of Congress* under subsection (f) with respect to a determination of the Arbitration Panel may be appealed, by a party to the arbitration, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. The pendency of an appeal under this subsection shall not stay the [Tribunal's decision] *decision of the Librarian of Congress*. The court shall have jurisdiction to modify or vacate a decision of the [Tribunal] *Librarian of Congress* only if it finds, on the basis of the record before the [Tribunal] *Librarian of Congress*, that the Arbitration Panel or the

[Tribunal] ***Librarian of Congress*** **acted in an arbitrary manner. If the court modifies the decision of the [Tribunal]** ***Librarian of Congress,*** **the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the decision of the [Tribunal]** ***Librarian of Congress*** **and remand the case for arbitration proceedings as provided in this section.**

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103D CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 103–287

PROVIDING FOR CONSIDERATION OF H.R. 3167

OCTOBER 12, 1993.—Referred to the House Calendar and ordered to be printed

Mr. BONIOR, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 273]

The Committee on Rules, having had under consideration House Resolution 273, by record vote of 5 to 4, report the same to the House with the recommendation that the resolution do pass.

The following are the amendments made in order under House Resolution 273.

PART 1

The following are the amendments (stated in terms of page and line numbers of the introduced bill) considered as adopted in the House and in the Committee of the Whole pursuant to House Resolution 273.

Page 2, line 2, strike "February 5, 1994" and insert "January 1, 1994".

Page 3, line 10, strike "February 5, 1994" and insert "January 1, 1994".

Page 3, line 12, strike "May 21, 1994" and insert "March 26, 1994".

Page 3, beginning in line 16, strike "February 5, 1994" and insert "January 1, 1994".

Page 3, Line 20, strike "February 5, 1994" and insert "January 1, 1994".

Page 4, strike the period at the end of line 10 and insert the following: "; except that such repeal shall not apply in determining eligible for emergency unemployment compensation from an account established before October 2, 1993."

Page 8, strike line 21 and all that follows through line 16 on page 9.

79–008

PART 2

1. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE JOHNSON OF CONNECTICUT OR HER DESIGNEE, DEBATABLE FOR NOT TO EXCEED 20 MINUTES

At the end of section 2 of the bill, insert the following new subsection:

(f) LOW-UNEMPLOYMENT STATES NOT ELIGIBLE FOR EXTENSION.—No emergency unemployment compensation shall be payable in any State by reason of the amendments made by this section unless the average rate of total unemployment in such State for the period consisting of the most recent 3 calendar months for which data are published before the date of the enactment of this Act is 5 percent or greater.

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2. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE SWIFT OF WASHINGTON OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 20 MINUTES

At the end of the bill, add the following:

SEC. 7. TREATMENT OF RAILROAD WORKERS.

(a) EXTENSION OF PROGRAM.—

(1) IN GENERAL.—Paragraphs (1) and (2) of section 501(b) of the Emergency Unemployment Compensation Act of 1991 (Public Law 102–164, as amended) are each amended by striking "October 2, 1993" and inserting "January 1, 1994".

(2) CONFORMING AMENDMENT.—Section 501(a) of such Act is amended by striking "October 1993" and inserting "January 1994".

(b) LENGTH OF BENEFITS DURING PERIOD OF EXTENSION.—Section 501(d)(2)(B)(ii) of such Act is amended by striking "on and after the date on which a reduction in benefits is imposed under section 102(b)(2)(A)(iv)" and inserting "after October 2, 1993".

(c) TERMINATION OF BENEFITS.—Section 501(e) of such Act is amended—

(1) by striking "October 2, 1993" and inserting "January 1, 1994", and

(2) by striking "January 15, 1994" and inserting "March 26, 1994".

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103D CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT 103–288

PROVIDING FOR CONSIDERATION OF H.R. 1804

OCTOBER 12, 1993.—Referred to the House Calendar and ordered to be printed

Mr. DERRICK from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 274]

The Committee on Rules, having had under consideration House Resolution 274, by record vote of 6 to 4, report the same to the House with the recommendation that the resolution do pass.

The following are the amendments made in order under House Resolution 274.

1. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE GOODLING OF PENNSYLVANIA OR REPRESENTATIVE CONDIT OF CALIFORNIA OR THEIR DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 75, after line 21, insert the following (and redesignate the subsequent subsections accordingly):

(m) PROHIBITION ON FEDERAL MANDATES, DIRECTION, AND CONTROL.—Nothing in this section shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State and local resources.

2. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE KILDEE OF MICHIGAN OR REPRESENTATIVE GUNDERSON OF WISCONSIN OR THEIR DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 122, after line 2, insert the following:

(II) meet or exceed the highest applicable standards used in the United States, including apprenticeship standards registered under the National Apprenticeship Act;

Page 122, line 3, strike "(II)" and insert "(III)".
Page 122, line 6, strike "(III)" and insert "(IV)".
Page 122, line 9, strike "(IV)" and insert "(V)".

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Page 122, line 14, strike "(V)" and insert "(VI)".
Page 122, line 20, strike "(VI)" and insert "(VII)".
Page 125, strike line 12 and all that follows through line 25 on page 126.
Page 127, strike lines 1 and 2 and insert the following:
(e) RELATIONSHIP WITH ANTIDISCRIMINATION LAWS.—
Page 127, line 3, strike "(A)" and insert "(1)" and move the provisions of the paragraph two ems to the left.
Page 127, line 8, strike "(B)" and insert "(2)" and move the provisions of the paragraph two ems to the left.

3. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE PAYNE OF NEW JERSEY OR REPRESENTATIVE MACHTLEY OF RHODE ISLAND OR THEIR DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 7, after line 10, insert the following:
"(iv) all students will have access to physical education and health education to ensure they are healthy and fit;".
Page 7, line 11, strike "(iv)" and insert "(v)".
Page 7, line 14, strike "(v)" and insert "(vi)".

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4. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE MCCURDY OF OKLAHOMA OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 11, after line 25, insert the following:
(8) SCHOOL AND HOME PARTNERSHIP.—(A) By the year 2000, every school and home will engage in partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.
(B) The objectives for this Goal are that—
(1) every State will develop policies to assist local schools and local educational agencies to establish programs for increasing partnerships that respond to the varying needs of parents and the home, including parents of children who are disadvantaged, bilingual, or disabled;
(2) every school will actively engage parents and families in a partnership which supports the academic work of children at home and shared educational decision making at school;
(3) every home will be responsible for creating an environment of respect for education and providing the physical and emotional support needed for learning; and
(4) parents and families will help to ensure that schools are adequately supported and will hold schools and teachers to high standards of accountability.

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5. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE TRAFICANT OF OHIO OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 135, after line 25, insert the following:

SEC. 504. COMPLIANCE WITH BUY AMERICAN ACT.

No funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1993 (41 U.S.C. 10a–10c, popularly known as the "Buy American Act").

SEC. 505. SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE.

(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this Act, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the head of each Federal agency shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress

SEC. 506. PROHIBITION OF CONTRACTS.

If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds provided pursuant to this Act, pursuant to the debarment, suspension, and ineligibility procedures described in section 9.400 through 9.409 of title 48, Code of Federal Regulations.

6. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE WHEAT OF MISSOURI OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 136, line 2, strike "RESOURCE CENTERS" and insert "RESOURCES".

Page 136, line 7, strike "private,".

Page 136, line 9, before "enrolled" insert ", aged birth to 5 years, and children".

Page 136, beginning on line 12, before "enrolled" insert ", aged birth to 5 years, and children".

Page 136, line 16, before "enrolled" insert ", aged birth to 5 years, and children".

Page 136, line 23, before "enrolled" insert ", aged birth to 5 years, and children".

Page 137, line 2, before "enrolled" insert ", aged birth to 5 years, and children".

Page 137, line 3, strike "and" after the semicolon.

Page 137, line 6, strike the period and insert ", and".

Page 137, after line 6, insert the following:

(6) include funds to establish, expand, and operate Teachers as Parents programs.

Page 137, line 9, strike "private,".

Page 137, line 14, strike "governing" and insert "advisory".

Page 137, line 16, strike "A majority of parents of children" and insert "parents of children, aged birth to 5 years, and children"

Page 137, line 22, strike "governing" and insert "advisory".

Page 138, line 9, before "enrolled" insert ", aged birth to 5 years, and children".

Page 138, line 19, strike "governing" and insert "advisory".

Page 139, line 16, strike "children enrolled in participating schools" and insert "parents of children, aged birth to 5 years, and children enrolled in participating schools".

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7. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE WATT OF NORTH CAROLINA OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 139, line 23, strike "and".

Page 139, line 24, insert "and" after the semicolon.

Page 139, after line 24, insert the following

(I) plan, implement, and fund activities that coordinate the education of their children with other Federal programs that serve such children or their families;

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8. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE BROWN OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 10 MINUTES

Page 9, line 5, insert ", including the metric system of measurement," after "education".

Page 9, line 9, insert ", including the metric system of measurement," after "science".

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9. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE PORTER OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 20 MINUTES

Page 107, after line 20, insert the following:

SEC. 315. PROHIBITION OF FUNDS.

None of the funds provided under this title may be used to fund programs established by local educational agencies that serve more than 250,000 students.

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10. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE ARMEY OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR NOT TO EXCEED 60 MINUTES

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Parent and Student Empowerment Act".

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) parents must have a greater stake in their children's schools if American education is to improve;

(2) the reforms in education prompted by the 1983 "Nation at Risk" report have achieved good results in some places, but

have failed to reverse a 30-year nationwide decline in student academic achievement scores;

(3) reform should come from the bottom up, from parents, teachers, and business and community leaders, and not down from Federal or State governments;

(4) the Federal Government should give States and local communities maximum flexibility to achieve national education goals; and

(5) reform should emphasize results, not more spending.

TITLE I—NATIONAL EDUCATION GOALS

SEC. 101. PURPOSE.

It is the purpose of this title to recognize six national education goals.

SEC. 102. INTERPRETATION.

Nothing in this title shall be construed to authorize or encourage Federal control over, involvement in, or regulation of public, private, religious, or home schools, or any curricular framework, instructional material, examination, or assessment system during the 5-year authorization of this Act or at any future time.

SEC. 103. NATIONAL EDUCATION GOALS.

The Congress declares that the national education goals are the following:

(1) SCHOOL READINESS.—(A) By the year 2000, all children in America will start school ready to learn.

(B) The objectives for this goal are that—

(i) all disadvantaged and disabled children will have access to high-quality and developmentally appropriate preschool programs that help prepare children for school;

(ii) every parent in America will be a child's first teacher and devote time each day to helping his or her preschool child learn, and parents will have access to the training and support they need; and

(iii) children will receive the nutrition and health care needed to arrive at school with healthy minds and bodies, and the number of low-birthweight babies will be significantly reduced through enhanced prenatal health systems.

(2) SCHOOL COMPLETION.—(A) By the year 2000, the high school graduation rate will increase to at least 90 percent.

(B) The objectives for this goal are that—

(i) the Nation must dramatically reduce its dropout rate, and 75 percent of students who do drop out will successfully complete a high school degree or its equivalent; and

(ii) the gap in high school graduation rates between American students from minority backgrounds and their non-minority counterparts will be eliminated.

(3) STUDENT ACHIEVEMENT AND CITIZENSHIP.—(A) By the year 2000, American students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography, and every school in America will ensure that all students learn to use their minds well, so they may be prepared

for responsible citizenship, further learning, and productive employment in our modern economy.

(B) The objectives for this goal are that—

(i) the academic performance of elementary and secondary students will increase significantly in every quartile, and the distribution of minority students in each level will more closely reflect the student population as a whole;

(ii) the percentage of students who demonstrate the ability to reason, solve problems, apply knowledge, and write and communicate effectively will increase substantially;

(iii) all students will be involved in activities that promote and demonstrate good citizenship, community service, and personal responsibility;

(iv) the percentage of students who are competent in more than one language will substantially increase; and

(v) all students will be knowledgeable about the diverse cultural heritage of this Nation and about the world community.

(4) MATHEMATICS AND SCIENCE.—(A) By the year 2000, United States students will be first in the world in mathematics and science achievement.

(B) The objectives for this goal are that—

(i) math and science education will be strengthened throughout the system, especially in the early grades;

(ii) the number of teachers with a substantive background in mathematics and science will increase by 50 percent; and

(iii) the number of United States undergraduate and graduate students, especially women and minorities, who complete degrees in mathematics, science, and engineering will increase significantly.

(5) ADULT LITERACY AND LIFELONG LEARNING.—(A) By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

(B) The objectives for this goal are that—

(i) every major American business will be involved in strengthening the connection between education and work;

(ii) all workers will have the opportunity to acquire the knowledge and skills, from basic to highly technical, needed to adapt to emerging new technologies, work methods, and markets through public and private educational, vocational, technical, workplace, or other programs;

(iii) the number of quality programs, including those at libraries, that are designed to serve more effectively the needs of the growing number of part-time and midcareer students will increase substantially;

(iv) the proportion of those qualified students, especially minorities, who enter college, who complete at least two years, and who complete their degree programs will increase substantially; and

(v) the proportion of college graduates who demonstrate an advanced ability to think critically, communicate effectively, and solve problems will increase substantially.

(6) SAFE, DISCIPLINED, AND DRUG-FREE SCHOOLS.—(A) By the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning.

(B) The objectives for this goal are that—

(i) every school will implement a firm and fair policy on use, possession, and distribution of drugs and alcohol;

(ii) parents, businesses, and community organizations will work together to ensure that the schools are a safe haven for all children; and

(iii) every school district will develop a comprehensive K–12 drug and alcohol prevention education program. Drug and alcohol curriculum should be taught as an integral part of health education. In addition, community-based teams should be organized to provide students and teachers with needed support.

TITLE II—SCHOOL REFORM AND PARENT EMPOWERMENT

SEC. 201. PURPOSE.

The purpose of this title is to raise the quality of education for all American students by spurring a 5-year effort to promote dramatic and effective changes in the system of elementary and secondary education throughout the Nation.

SEC. 202. PROGRAM AUTHORIZED.

The Secretary is authorized, in accordance with the provisions of this title, to make grants to State educational agencies to enable States and local educational agencies to reform and improve the quality of education. Such grants shall be used to develop and implement innovative educational reform plans.

SEC. 202. APPLICATION.

(a) IN GENERAL.—If a State desires to receive assistance under this title, the State educational agency shall submit an application to the Secretary at such time, in such manner, and accompanied by such additional information as the Secretary may reasonably require. Such application shall cover a 5-year period.

(b) CONSIDERATION OF APPLICATIONS.—Each such application shall—

(1) contain satisfactory evidence that the State educational agency has or will have authority, by legislation if necessary, to implement the State reform plan required under section 204;

(2) provide an assurance that the State has a strategy for ensuring broad participation in the planning process, including parents, students, teachers, business leaders, and other community leaders;

(3) provide an assurance that the State will notify the public through print and electronic media and all local educational agencies through actual notice—

(A) that the State has made application for funds under this title;

(B) of the purposes for which the funds will be used; and

(C) that the State is developing a reform plan under section 204;

(4) provide an assurance that all students shall have equal access to the curricular frameworks and instructional materials developed as part of the State reform plan;

(5) describe actions taken and resources identified or committed to meet the requirements of this title;

(6) provide an assurance that the applicant shall prepare and submit to the Secretary annual evaluations of and reports concerning the State reform plan; and

(7) provide an assurance that the State shall carry out the provisions of section 204.

(c) APPROVAL.—The Secretary shall approve an application and any amendment to the application if the application or the amendment to such application meets the requirements of this section and is of sufficient quality to effect substantial reform of elementary and secondary education in the State. The Secretary shall not finally disapprove an application or amendment, except after giving reasonable notice, technical assistance, and an opportunity for a hearing.

SEC. 204. DEVELOPMENT AND APPROVAL OF STATE PLAN.

(a) ESTABLISHMENT OF STATE REFORM PANEL.—Each State educational agency assisted under this title shall establish a temporary ad hoc panel to develop a statewide reform plan. Such panel shall consist of—

(1) a chairman, who shall be the chief executive of the State (or designee);

(2) the presiding officer and the minority leader of each house of the State legislature (or designees);

(3) the chief State school officer;

(4) the head of the office that coordinates higher education programs in the State or, if there is no such office, the head of the office designated under section 2008 of the Dwight D. Eisenhower Mathematics and Science Education Act (20 U.S.C. 2988) (or designee); and

(5) individuals selected by the chief executive of the State, including representatives from the following groups and organizations:

(A) Parents.

(B) Teachers.

(C) Principals.

(D) Local school boards.

(E) Small businesses.

(F) Large businesses.

(b) ADDITIONAL MEMBERS.—(1) The first meeting of the State reform panel shall be convened by the chief executive of the State. At such meeting, the panel members designated or selected under subsection (a) may select additional panel members.

(2) The membership of the panel shall not exceed 25 in number.

(3) The chief executive of the State shall serve as the chairman of the panel and determine a meeting schedule.

(c) DEVELOPMENT OF STATE PLAN.—The State reform panel shall develop a State reform plan that—

(1) stresses that all students are to demonstrate substantial improvement in academic achievement and cognitive skills;

(2) emphasizes quantifiable measures of the improvement of students' cognitive skills rather than prescribing how State and local educational agencies should achieve such improvements;

(3) describes strategies for how the State will encourage parents and the public to support and become involved in implementing the State and local reform plans;

(4) establishes State goals to maximize academic achievement by each student;

(5) establishes academically rigorous curricular frameworks;

(6) provides for the development of instructional materials based upon the curricular frameworks;

(7) provides for the development of valid, reliable, and procedurally fair assessment systems based upon the curricular frameworks that are capable of accurately measuring the basic cognitive skills and knowledge required to meet the State's education goals;

(8) establishes a process for reviewing Federal, State, and local laws and regulations and for recommending changes in such laws and regulations to further state-wide reform;

(9) provides a process for selecting local educational agencies to receive subgrants under section 206;

(10) provides for the development of objective criteria and measures against which the success of local reform plans can be evaluated; and

(11) provides for the evaluation of the effectiveness of the State reform plan in helping low-achieving students to improve their performance, using academic achievement and such other measures as attendance, grade retention, and dropout rates.

(e) PUBLIC COMMENT PERIOD.—Following the development of the State reform plan, the State reform panel shall seek public comment by—

(1) publishing the plan with a comment period of at least 60 days, and

(2) notifying the public through electronic and print media and conducting regional hearings.

After providing the public with an opportunity to comment on the plan, the panel shall consider the public's comments and make appropriate changes.

(f) APPROVAL OF STATE PLAN.—(1) The State reform plan shall be submitted to the State for review by the State educational agency, which may make recommendations to the panel for changes to such plan. The State educational agency shall then implement the plan after such agency has submitted the plan to, and received approval of the plan by, the Secretary.

(2) The Secretary shall approve a State reform plan if the plan meets the requirements of this section.

(3) The Secretary shall not finally disapprove a plan or an amendment to such plan, except after giving reasonable notice, technical assistance, and an opportunity for a hearing.

(g) REVIEW OF STATE PLAN.—The State reform panel and the State educational agency shall review on a continuing basis the implementation of the State reform plan for the period during which the State receives Federal funding under this title. The results of such review shall be prepared in writing by the State reform panel and be included by the State in its annual report to the Secretary under section 213(a).

SEC. 205. STATE USES OF FUNDS.

(a) USES OF FUNDS.—Funds allotted by the Secretary under paragraphs (a) and (b) of section 211 and State and private funds contributed to make up the total cost of a State reform plan under section 211(c) shall be used by a State with an approved application for the following purposes:

(1) To develop and implement the State reform plan (with not more than 10 percent of the Federal funds shall be used for this purpose).

(2) To support the activities of the State reform panel (including the travel expenses of the members of such panel).

(3) To make subgrants to local educational agencies as provided in section 206.

(4) To provide technical assistance (including dissemination of information) to local educational agencies to assist in developing and carrying out local reform plans.

(5) To undertake evaluation, reporting, and data collection.

(b) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—In the first year that a State receives a Federal allotment under this title, from not less than 75 percent of the total cost of a State's reform plan, the State educational agency shall make subgrants to local educational agencies for the purpose of developing and implementing local reform plans as provided in section 206. In the second and succeeding years, from not less than 90 percent of the total cost of a State's reform plan, the State educational agency shall make subgrants to local educational agencies to fulfill the purposes of this Act.

SEC. 206. DEVELOPMENT AND APPROVAL OF LOCAL PLANS.

(a) IN GENERAL.—As described in the State reform plan, and based upon the recommendations of the State reform panel established under section 204, the State shall make subgrants to local educational agencies based upon local reform plans consistent with the State reform plan and developed by temporary ad hoc local reform panels.

(b) ESTABLISHMENT OF LOCAL REFORM PANEL.—Each local educational agency assisted under this title shall establish a temporary ad hoc local reform panel to develop a district-wide reform plan consistent with the State reform plan. Such panel shall consist of—

(1) a chairman, who shall be the highest-ranking elected chief executive in the local jurisdiction most closely approximating the boundaries of the school district (or designee), and

who is not also a member of any other local educational reform panel;

(2) the chief district-wide school officer; and

(3) individuals selected by the chairman of the local reform panel, including representatives from the following groups and organizations:

(A) Parents.

(B) Teachers.

(C) The local school board.

(D) Small businesses.

(E) Large businesses.

(c) ADDITIONAL MEMBERS.—(1) The panel members designated or selected in subsection (b) may select additional panel members from community organizations.

(2) The membership of the panel shall not exceed 11 in number.

(3) The chairman of the panel shall determine a meeting schedule.

(d) APPROVAL OF LOCAL REFORM PLAN.—The local educational agency shall implement the local reform plan after the local reform panel has submitted its plan to the Secretary and received written confirmation from the Secretary that its plan is consistent with the State reform plan.

SEC. 207. LOCAL USES OF FUNDS.

A local educational agency which receives a subgrant under this title shall use the funds for the purpose of district-wide reform, consistent with the State and local reform plans. Authorized activities shall include one or more of the following:

(1) Model schools, including charter schools, which reflect the best available knowledge regarding teaching and learning, which use the highest quality instructional materials and technologies, and which are designed to meet State and local education goals as well as the particular needs of their students and communities.

(2) Merit schools systems which reward schools with students who, as a group, demonstrate improved performance on curriculum-related outcome measures that assess only basic cognitive skills.

(3) Choice programs which permit parents to select the school their children will attend.

(4) Decentralized management which permits maximum decision making at the individual school level, involves parents, and emphasizes alternative certification.

SEC. 208. PROHIBITED USES OF FUNDS.

No State educational agency, local educational agency, or school that receives funds under this Act shall—

(1) adopt outcome measures that assess affective skills; or

(2) engage in programs that coordinate access to health care or other social services.

SEC. 209. PARENTAL CONSENT.

(a) PSYCHOLOGICAL TESTING.—No funds under this title shall be made available to any State educational agency, local educational agency, or school in which psychiatric or psychological examination, testing, or treatment, or any project that involves surveying, ana-

lyzing, or evaluating the personal values, attitudes, beliefs, or sexual behavior of the student, take place, without the prior, written consent of the student (if the student is an adult or an emancipated minor), or in the case of an unemancipated minor, without the prior, written consent of a parent or guardian who has been first informed of the purpose of such examination, test, treatment, or information sought to be obtained.

(b) PRIVACY.—No funds under this title shall be made available to any State educational agency, local educational agency, or school that lacks a written policy to protect the right of parents (or student, if the student is an adult or an emancipated minor) to—

(1) inspect or review at any time any and all official records directly related to such student, including all written or electronically recorded material that is incorporated into the student's cumulative record folder, identifying data, academic work completed, grades, standardized achievement test scores, attendance data, scores on standardized intelligence, aptitude, or psychological tests, interest inventory results, health data, medical records, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns; and

(2) forbid the release of such student's official records, without the parents' (or student's, if the student is an adult or an emancipated minor) prior written consent, to anyone other than—

(A) school officials within the student's school or local educational agency who have a legitimate educational interest;

(B) officials of other schools or school systems in which the student intends to enroll, upon condition that the student's parents (or the student, if the student is an adult or an emancipated minor) be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge and correct the content of the record; or

(C) in connection with a student's application for, or receipt of, financial aid.

(c) OPT-OUT RIGHT.—No funds under this title shall be made available to any State educational agency, local educational agency, or school that lacks a written policy to protect the right of parents (or student, if the student is an adult or emancipated minor) to withdraw the student from participation in any activity carried out as part of the State or local reform plan when the parents (or student, if the student is an adult or an emancipated minor) consider such activity to be detrimental to the student's education.

(d) GRACE PERIOD.—Any State educational agency, local educational agency, or school that receives funds under this title shall have a grace period not to exceed 6 months from the date that such funds are first made available to write the parental consent policies required under subsections (b) and (c).

SEC. 210. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.

(a) IN GENERAL.—To fulfill the purposes of this Act, the Secretary may waive any requirement of any Federal statute listed in

subsection (g) or of the regulations issued under such statute for a State educational agency, local educational agency, or school that requests such a waiver.

(b) PROMPTNESS OF RESPONSE TO WAIVER REQUEST.—The Secretary shall act on any such waiver request not later than 180 days after receipt or the waiver shall be considered granted.

(c) WAIVER PERIOD.—Each such waiver shall be for a period not to exceed 3 years. The Secretary may extend such period if the Secretary determines that the waiver has been effective in enabling the State or local educational agency to fulfill the purposes of this Act.

(d) WAIVER REVIEW.—The Secretary shall periodically review the performance of any State educational agency, local educational agency, or school for which the Secretary has granted a waiver and shall terminate the waiver if the Secretary determines that such performance has been inadequate to justify the waiver's continuation.

(e) EXCEPTION.—Nothing in this section shall be construed to authorize the waiver of section 438 or 439 of the General Education Provisions Act.

(f) SPECIAL PROVISION.—Nothing in this section shall be construed to authorize the waiver of any provision of this Act.

(g) PROGRAMS SUBJECT TO WAIVER.—The statutes subject to the waiver authority of this section are as follows:

(1) Chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(2) Part A of chapter 2 of title I of the Elementary and Secondary Education Act of 1965.

(3) The Dwight D. Eisenhower Mathematics and Science Education Act (part A of title II of the Elementary and Secondary Education Act of 1965).

(4) The Emergency Immigrant Education Act of 1984 (part D of title IV of the Elementary and Secondary Education Act of 1965).

(5) The Drug-Free Schools and Communities Act of 1986 (title V of the Elementary and Secondary Education Act of 1965).

(6) The Carl D. Perkins Vocational and Applied Technology Education Act.

(h) WAIVERS NOT AUTHORIZED.—The Secretary may not waive any statutory or regulatory requirement of the programs listed in subsection (g) relating to—

(1) maintenance of effort;

(2) comparability of services;

(3) the equitable participation of students and professional staff in private schools;

(4) parental participation and involvement; or

(5) the distribution of funds to State or to local educational agencies.

SEC. 211. ALLOTMENT OF FUNDS.

(a) TO THE SECRETARY OF THE INTERIOR.—From funds appropriated under section 218, the Secretary shall allot to the Secretary of the Interior for each fiscal year an amount equal to ½ of 1 percent of the funds appropriated, not to exceed $600,000 in any fiscal

year, to benefit Indian students enrolled in schools funded by the Department of the Interior for Indian students. The provisions of subsection (c) of this section shall not apply to payments made under this paragraph.

(b) TO THE STATES.—From the remaining amount appropriated under section 218, the Secretary shall make annual grants to States with approved applications.

(c) MATCHING REQUIREMENT.—(1) Of the total cost of a State reform plan, during the following years for which a State receives funds under this title, the Federal share under this title may not exceed—

(A) 100 percent the first year;
(B) 85 percent the second year;
(C) 60 percent the third year;
(D) 45 percent the fourth year; and
(E) 33 percent the fifth and any succeeding year.

(2) The non-Federal share under this title shall be paid by the State from State funds and may include contributions from private sources.

(3) The non-Federal share under this title may be in cash or in kind fairly evaluated.

(4) The matching requirements of this subsection shall not apply to the Virgin Islands, the Commonwealth of Puerto Rico, or Pacific outlying areas.

(d) ADMINISTRATIVE COSTS.—From its annual Federal allotment, a State may reserve for administration (not to include the activities of the State reform panel) an amount not to exceed 4 percent or $250,000, whichever is greater.

(e) SPECIAL PROVISION.—Not less than 25 percent of the amounts made available to local educational agencies under this title shall be used for choice programs.

SEC. 212. AVAILABILITY OF INFORMATION TO NONPUBLIC SCHOOLS.

Proportionate to the number of children in a State or in a local educational agency who are enrolled in private elementary or secondary schools, a State educational agency or local educational agency that uses funds under this title to develop curricular frameworks, instructional materials, examinations, or assessment systems shall, upon request, make information related to such frameworks, materials, examinations, or assessment systems available to private schools and private school accrediting organizations.

SEC. 213. ANNUAL PROGRESS REPORTS; TECHNICAL ASSISTANCE.

(a) ANNUAL REPORT.—A State which receives funds under this title shall annually report to the Secretary—

(1) regarding such State's progress in meeting its State reform goals and plan;

(2) describing proposed activities for the succeeding year; and

(3) describing Federal regulations which may impede reform activities under this title as described in local reform plans approved by the Secretary.

(b) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance, either directly by grant or by contract, to the States to assist them in complying with the requirements of this

section. The Secretary may reserve up to ½ of 1 percent of the appropriations for this title to carry out this section.

SEC. 214. EVALUATION AND DISSEMINATION.

(a) EVALUATION.—The Secretary shall evaluate a representative sample of State and local reform efforts over the course of the 5-year authorization in order to assess the effectiveness of such plans and activities in improving the education performance of all students. The Secretary may reserve up to ½ of 1 percent of the appropriations for this title to carry out this section.

(b) DISSEMINATION.—The Secretary shall, annually and upon request, disseminate to the States information on reform approaches and materials developed under this title or through related efforts.

SEC. 215. REPORT TO CONGRESS.

The Secretary shall submit annually to the Members of the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report that contains—

(1) a description of the progress that States receiving funds under this title have made in developing and implementing their plans; and

(2) information from State and local reports regarding requirements in Federal law or regulation which have been identified by State or local educational agencies or State or local reform panels as impeding the purposes of this Act.

SEC. 216. GENERAL PROVISIONS.

Nothing in this title shall—

(1) be construed to exempt a State or local educational agency that receives funds under this title from the requirements of section 438 or 439 of the General Education Provisions Act;

(2) be construed to authorize any department, agency, officer, or employee of the Federal Government to—

(A) exercise any control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system; or

(B) prescribe the use of a particular examination or standards; or

(3) be construed to authorize or encourage Federal control over, involvement in, or regulation of private, religious, or home schools during the 5-year authorization of this Act or at any future time.

SEC. 217. DEFINITIONS.

For purposes of this title:

(1) The term "affective skills" means, but is not limited to meaning, the emotions, opinions, values, attitudes, beliefs, or sexual behavior of a student.

(2) The term "assessment system" means a system for measuring the cognitive skills and academic achievement of students that is based upon a set of curricular frameworks.

(3) The term "cognitive skills" means abilities to perform discrete academic tasks that demonstrate understanding of such basic subjects as reading, writing, mathematics, science, history, and geography, and that may be readily assessed, meas-

ured, and compared in objective and numerically quantifiable terms, but does not mean affective skills.

(4) The term "community organizations" means, but is not limited to meaning, fraternal or religious organizations, but does not mean organizations created for the purpose of, or having as their primary effect, the influencing of education or education policy.

(5) The term "curricular framework" means a specific, detailed description, in a particular subject matter area, of the knowledge and cognitive skills children should acquire at each grade level.

(6) The term "legitimate educational interest" means an interest in a student's cognitive skills and academic progress, but does not mean an interest in a student's affective skills, psychology, family, or other nonacademic matter.

(7) The term "Pacific outlying area" means American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until such time as the compact of Free Association is ratified).

(8) The term "private school" means nonpublic or religious education.

(9) The term "school" means public, private, or religious education.

(10) The term "Secretary" means the Secretary of Education.

(11) The term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(12) The terms "State educational agency" and "local educational agency" have the meaning given such terms in section 1471 of the Elementary and Secondary Education Act of 1965.

SEC. 218. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this title, there are authorized to be appropriated $400,000,000 for each of the fiscal years 1994 through 1998.

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103D CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103–289

WAIVING POINTS OF ORDER AGAINST THE CONFERENCE REPORT TO ACCOMPANY H.R. 2491

OCTOBER 13, 1993.—Referred to the House Calendar and ordered to be printed

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Ms. SLAUGHTER from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 275]

The Committee on Rules, having had under consideration House Resolution 275, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

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79–008

103D CONGRESS
1st Session } HOUSE OF REPRESENTATIVES { REPORT
103–290

LUMBEE RECOGNITION ACT

OCTOBER 14, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of California, from the Committee on Natural Resources, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 334]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 334) to provide for the recognition of the Lumbee Tribe of Cheraw Indians of North Carolina, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 334 is to provide for the recognition of the Lumbee Tribe of Cheraw Indians of North Carolina, and for other purposes.

BACKGROUND AND NEED

This issue comes to the Committee with a voluminous congressional record. The tribe first sought Federal recognition in a petition tribal leaders submitted to Congress in 1888. Congress referred the petition to the Department of the Interior. The Commissioner of Indian Affairs responded in 1890 as follows "While I regret exceedingly that the provisions made by the State of North Carolina are entirely inadequate, I find it quite impractical to render any assistance at this time. So long as the immediate wards of the Government are so insufficiently provided for, I do not see

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how I can consistently render any assistance to the Croatans or any other civilized tribes." The first bill to recognize the Lumbee Tribe was introduced in 1899. See H.R. 4009, 56th Cong., 1st Sess. Similar bills were introduced in 1910 (See H.R. 19036, 61st Cong., 2d Sess.), 1911 (See S. 3258, 62d Cong., 1st Sess.), 1913 (S. 3258, 82d Cong., 1st Sess.), 1924 (See H.R. 8083, 68th Cong., 1st Sess.), 1932 (See S. 4595, 72d Cong., 1st Sess.), 1933 (H.R. 5365, 73d Cong., 1st Sess.), 1955 (H.R. 4656, 84th Cong., 2d Sess.), 1988 (See H.R. 5042, 100th Cong., 2d Sess.), 1989 (See H.R. 2335, 101st Cong., 1st Sess.) and 1991 (See H.R. 1426, 102nd Cong., 1st Sess.). Hearings were held and substantial reports filed on several of these bills. (See Hearing before the Committee on Indian Affairs, House of Representatives on S. 3258, Feb. 14, 1913; H.Rep. No. 826, 68th Cong., 1st Sess.; H.Rep. No. 1752, 73rd Cong., 2d Sess.; S.Rep. No. 204, 73d Cong., 2d Sess.; H.Rep. No 1654, 84th Cong., 2d Sess.; S.Rep. No. 84–2012, 84th Cong., 2d Sess.; S.Rep. No. 100–579, 100th Cong., 2d Sess.; H. Rep. No. 215, 102nd Cong., 1st Sess.) In addition, Congress also requested and obtained substantial reports from the Department of the Interior on the tribe's history and status. See Indian School Supervisor Pierce Report, filed with Senate on April 4, 1912; Special Indian Agency McPherson report, Doc. No. 677, 53rd Cong., 2d Sess.; prepared in 1914; Report of H.R. Swanton, Smithsonian Institute, done at request of Bureau of Indian Affairs and submitted to Congress at the 1933 hearing. These hearings and studies consistently concluded that the Lumbees were a self-governing, independent Indian community, descended from Siouan tribes such as the Cheraw.

The various bills to recognize the Lumbee Tribe failed generally due to the opposition from the Department of the Interior. Oftentimes, the bills ran counter to then prevailing Federal Indian policy. For example, the early bills were inconsistent with the assimilationist policy ushered in by the 1887 Dawes Act. The 1955 bill was considered at a time when Congress was terminating the Federal-tribal relationship with many tribes. Most often the Department opposed the bills on fiscal grounds, i.e., the cost of servicing the tribe. For the same reason, recognition of the Lumbee Tribe has historically been controversial within Indian country. Fearing a diminution of Federal services to their own members, some tribes have opposed this and earlier bills to recognize the tribe. Other tribes, particularly in the east, have expressed support for the Lumbee recognition bills.

Nearly 40,000 Lumbee Indians are enrolled in the Lumbee Tribe with over 90 percent of these members residing in 18 communities throughout Robeson County and adjacent counties in rural southeastern North Carolina. Eligibility for tribal enrollment is limited to persons who were identified as Indian on source documents from the early 1900's, including the 1900 and 1910 Federal census, or who are determined by an Elders' Review Committee to be Indian, and the direct descendants of such persons. The Lumbee Indians have never had a reservation or received services from the Bureau of Indian Affairs (BIA) or the Indian Health Service (IHS) though they are eligible for and do receive funds from other Federal Indian programs because they are a state recognized tribe. The Lumbee Regional Development Association Inc. (LRDA) is presently the for-

mal representative of the Lumbee Indians. LRDA is a non-profit corporation organized in 1968, with an all Lumbee board of directors who are elected directly by the communities that comprise the Lumbee Tribe. The board functions much like a tribal council and in 1984 was formally designated as the interim tribal council by a tribal referendum.

While the exact origin and tribal deviation of the Lumbee Indians has been the subject of considerable dispute and uncertainty, ethnologists have testified in previous hearings that the tribe descends primarily from the Cheraw Tribe, a Siouan speaking tribe first encountered by Europeans in 1524. In 1914, Special Indian Agent O. M. McPherson, sent to investigate the history and condition of the tribe, concluded that the tribe was descended from the Cheraw Tribe. In 1934, John Swanton of the Bureau of Ethnology, agreed that the Lumbees were descended from the Cheraw Tribe. Dr. Jack Campisi, the tribe's ethnohistorian who testified before the Committee, and Dr. William Sturtevant, general editor of the Smithsonian Institution's "Handbook of North American Indians," confirmed the Cheraw origins of the Lumbee Tribe.

Many references to the Lumbee tribe can be found in newspapers and other accounts throughout the 1700's which refer to an Indian community, sometimes designated a Cheraw community, along "Drowning Creek", now called the Lumber River from which the tribe draws its present name. Many of the surnames of current tribal members are traced to ancestors of this period. Because of the precarious position of Indians in the early 1800's due to the removal of many tribes to Oklahoma, the Indians of Robeson County hid their Indian identity. However, incidents during and after the Civil War showed much activity in the Indian community, including recognition by local governmental authorities of this community as an Indian community. The major Lumbee folk hero, Henry Berry Lowrie, led a rebellious band at the close of the War until his disappearance in 1872. His memory is honored each summer when the Lumbees put on their outdoor drama titled "Strike at the Wind".

Lumbee history since the Civil War shows the continuous existence of a distinct Indian community with its own leaders who aggressively defend Lumbee interests. In 1885, the State of North Carolina recognized the tribe and established a separate school system for Lumbee children. Enrollment in the school was restricted to Lumbee children who could demonstrate Lumbee descent four generations back, or into the 1770's. Lumbee tribal leaders were authorized to determine eligibility to enroll in the school. These enrollment records, along with Federal census records, form the base roll from which all present day tribal members must demonstrate descent. On March 26, 1913, the State's Attorney General Bickett issued an opinion that the county board of education could overrule decisions of the Lumbee leaders as to eligibility for enrollment in the Lumbee schools. The Lumbees objected to this infringement on their independence. Under pressure from the Lumbee leadership, the State of North Carolina enacted legislation in 1919 that set aside the Attorney General's opinion. The Indian Normal School which was established under authority of the 1885 state statute is now Pembroke State University.

The contemporary Lumbee community is closely bound together by extensive and overlapping kinship ties and the strong sense of community. The Lumbee view Robeson County and environs as "home". Other Indian institutions, including an all Indian church, a newspaper, an annual homecoming, and predominantly Indian schools, serve to further bind the Lumbees together in a distinct Indian community. In summary, the historical record is persuasive and compelling that for the last two hundred years the Lumbees have functioned as an Indian tribe and have been recognized as such by state and local authorities.

In 1914, an Interior Department investigation carried out at the direction of the Senate, found that Lumbees were eligible to attend Federal Indian schools. Again in 1924, the tribe sought Congressional recognition, as well as in 1932 and 1933. The reports and studies done by the Department of the Interior on the tribe's history and condition in response to these bills fully document the Department's extensive knowledge about and experience with the Lumbee Indians. These bills generally tracked the state legislation which had been enacted recognizing the tribe under a particular name and in some cases extending certain services to the tribe. But in each instance, the Federal legislation failed. Always, the economic effects of recognition seemed to be the principle reason for denial of Federal recognition.

In 1951, by a margin of 2,169 to 35, the Robeson County Indians voted to adopt the name "Lumbee Indians of North Carolina" in preference to "Cherokee Indians of North Carolina" and, in 1953, the General Assembly of North Carolina passed a bill designating them as "Lumbee Indians of North Carolina".

In 1956, Congress enacted the Act of June 7, 1956 (70 Stat. 254) recognizing these Indians as "Lumbee Indians of North Carolina", but, at the request of the Department of the Interior, added a sentence providing that—

> Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

The 1953 state legislation was and is recognized by the State of North Carolina and the tribe as legislation which recognizes the Lumbee Indians as an Indian tribe. The identical Federal bill was intended by the tribe to have the same legal effect. The tribe's historian testified before the Senate in 1988 that the tribe plainly intended and understood the 1956 Federal Act to be recognition legislation, evidence by the hundred year history of the tribe's efforts to obtain Federal recognition legislation upon the heels of and in the same terms as state recognition legislation.

Excerpts from the legislative history of the 1956 Act support the view that the Federal bill had the same purpose as the earlier, identical state legislation, i.e., recognition of the tribe. Senator Scott, the sponsor of the 1956 bill, testified in support of the bill before a Senate subcommittee that, "The State of North Carolina has already by state law recognized the Lumbee Indians under that

tribal name * * * Giving official [Federal] recognition to the Lumbee Indians means a great deal to the 4,000 Indians involved * * *" During Congressional consideration of the bill, it was widely reported as a recognition bill in contemporaneous newspaper articles.

The amendment to the 1956 Act was apparently necessary in the view of the Department of the Interior to insure that the bill did not obligate the United States to provide services to the tribe. (Comment of Assistant Secretary of the Interior, H. Rep. No. 1654, 84th Cong., 2d Sess.) However, the restriction on eligibility for services does not, by itself, affect the intent of Congress to recognize the tribe. The 1953 state act had not provided for services and yet it was and is accepted as recognition legislation.

The 1956 Lumbee Act served as the model for another act of Congress, namely the 1968 act relating to the Tiwa Indians of Texas (82 Stat. 93). The legislative history of the 1968 Tiwa Act states explicitly that the 1956 Lumbee Act is the model for the Tiwa legislation (H. Rep. No. 1070, 90th Cong., 2d Sess). In 1987, the Congress extended full Federal recognition to the Tiwas and in doing so, acknowledged that the 1968 Tiwa Act had recognized the Tiwas (S. Rep. 100–90, 100th Cong., 1st sess.). If the 1968 Tiwa Act recognized the tribe, then its model—the 1956 Lumbee Act—must have recognized the Lumbee as well.

Concern has been expressed that passage by Congress of the bill to recognize the Lumbee Tribe of Cheraw Indians of North Carolina would be unfair to other tribes who are also seeking recognition through the Branch of Acknowledgment and Research (BAR) of the Bureau of Indian Affairs. This concern overlooks the determination in 1989 by the Associate Solicitor for Indian Affairs that the Lumbee Tribe is ineligible for the administrative process due to the 1956 Lumbee Act. Since the promulgation in 1978 of the regulations governing the administrative acknowledgment of Indian groups as Federally recognized Indian tribes, the Congress has considered the status of ten other Indian tribes specifically determined to be ineligible for the administrative process. In every case, Congress enacted recognition legislation to restore Federal recognition to the tribes. See Paiute Restoration Act, P.L. 96–227, Act of April 3, 1980; Cow Creek Band of Umqua Restoration Act, P.L. 97–391, Act of December 29, 1982; Grand Ronde Restoration Act, P.L. 98–165, Act of November 22, 1983; Coos Restoration Act, P.L. 98–481, Act of October 17, 1984; Klamath Restoration, P.L. 99–398, Act of August 27, 1987; Pascua Yaqui and Alabama Coushatta Restoration Act, P.L. 100–89, Act of August 18, 1987; Ysleta del Sur Pueblo Restoration Act, above; Coquille Restoration Act, P.L. 101–42, Act of June 28, 1989; and Ponca Restoration Act, P.L. 101–484, Act of October 31, 1990. While all the acts were denominated restoration acts, one of these tribes, the Ysleta del Sur Pueblo (previously known as the Tiwas), like the Lumbees, did not have a Federal relationship that pre-existed the act that barred them from administrative recognition. Thus, the 1987 act extending Federal services to the Ysleta del Sur Pueblo is legislative precedent for the Lumbee bills.

In addition, it should be noted that Congress is very close to completing the legislative task of clarifying the status of all the tribes

terminated or otherwise barred from administrative recognition. The Lumbee Tribe is one of only a few tribes left that the Department of the Interior has determined to be ineligible for administrative acknowledgment. The other tribes include the Catawba Tribe of South Carolina and a handful of California Rancherias which were "terminated" during the 1950's. Like these groups, the Lumbee Tribe is ineligible for administrative action. Under these circumstances, legislative action on Lumbee status would help to close the door on these matters rather than open the flood gates for similar legislation.

It is also noteworthy that the administrative acknowledgment process has been criticized by the Congress and tribes. This Committee has conducted a great many oversight hearings on the administrative process and found it to be expensive, inordinately lengthy and too heavily dependent upon formal documents on Indian tribes even though such documents do not exist or were not generated due to a variety of historic circumstances. Given the nature of the process, it is very conceivable that a legitimate Indian tribe could be denied recognition administratively for reasons beyond its control if it could not produce the degree and detail of documentation required by the Department. The Committee believes that the Lumbee Tribe may be such a tribe.

The Lumbee Tribe has prepared an extensive petition for Federal acknowledgment pursuant to the Department's regulations. The petition was submitted by the tribe on December 17, 1987. The petition consists of a two volume narrative report, one and one-half file boxes of documentary evidence and a 16 volume membership roll. There is a consistent historical record of the presence of the Lumbees and of tribal activity, but during certain periods the documentation is sporadic, Dr. Campisi, who is the principal author of the Lumbee petition, explained that non-Indian settlement around the Lumbee community occurred relatively late, circa 1830, so that no literate individuals or organized governments were present continuously before that time to record tribal activity. The Committee has been advised that the tribe has exhausted all research avenues and that the documentation before the Committee and the BAR is all that exists.

The Department had this material in its possession for nearly two years before determining that the tribe is ineligible for the administrative process. Yet, during that time the Department had not yet done the first step in the administrative process, the so-called obvious deficiency review. In the Department's testimony before this Committee on the recognition bill in the 102nd Congress, Mr. Ronal Eden testified that the present Lumbee documentation is inadequate. Apparently, the Department would recognize the tribe only if the tribe could produce further documentation that does not appear to exist, at no fault of the tribe. In making this preliminary judgment on the Lumbee material, the Department appears to have dismissed prior studies done by it on the tribe. This preliminary judgment is not supported by a number of noted anthropologists appears to be a minority view. Dr. William Sturtevant has written that "It is clear that the Lumbee have those characteristics that identify an Indian tribe. Certainly anthropologists who have looked into the case over the last century or so agree that they are

an Indian tribe; no anthropologist has denied it." S.Hrg. 100–881 on S. 2672, 100th Cong., 2d Sess.

Finally, the Committee notes that the size alone of the Lumbee Tribe distinguishes it from all other non-Federally recognized tribes. Not only is the Lumbee Tribe the largest non-Federally recognized tribe, but is nearly four times the size of the next largest tribe with a petition pending before the Department of the Interior. It is the size of the tribe that in large measure has generated controversy on this issue in Indian country and historically heightened concern about this tribe by the Department of the Interior. Of course, only Congress can make fiscal and other adjustments necessary or helpful to bring the Lumbee Tribe on board as a Federally recognized tribe.

It is clear that in some cases, recognition of an Indian tribe is a matter that should be left for the Congress to address. Congress plainly has the constitutional authority to recognize Indian tribes. In fact, the overwhelming majority of Federally recognized Indian tribes were recognized by Congress either through treaty or statute. The present administrative process was established under general authority delegated by the Congress to the Department of the Interior, but there is no specific statutory authority for the process. In other words, the process is wholly administrative in origin. Obviously, Congress is not bound by those regulations in determining whether to recognize a particular Indian tribe. Especially where the Department has so often analyzed a tribe in the past, Congress can take those past department determinations and the general view of anthropologists into account. The record here is adequate for a congressional determination and the circumstances support the appropriateness of recognition legislation.

The Committee notes that section 3 of the bill makes the Lumbee tribe unique among Indian tribes. Subsection 3(a) makes members of the Lumbee Tribe of Cheraw Indians eligible for all services and benefits provided to Indians because of their status as Federally recognized Indians. As a result, the members of the Lumbee Tribe have the same status under Federal law as all other enrolled members of Federally recognized Indian tribes. The Lumbee Tribe does not now have a reservation and H.R. 334 does not create a reservation, the boundaries of which would typically demarcate the service area for Federal agencies to provide Federal Indian services to tribal members. Therefore, subsection (a) further provides that those members of the Lumbee Tribe who reside in Robeson and adjoining counties in North Carolina shall be deemed to be resident on or near an Indian reservation, thereby establishing a geographic delivery area for Federal Indian services. However, this subsection conditions the eligibility of Lumbee tribal members for Federal Indian services upon the appropriation of funds for these purposes. The appropriation of funds for the delivery of services to members of the Lumbee Tribe will take place following the completion of the steps set out in subsection (b). Only at that point will Lumbee tribal members begin receiving Federal Indian services. This subsection is not intended to affect those programs and grants that the tribe currently receives from other Federal agencies because of its status as a state recognized Indian tribe. Subsection 3(c) authorizes the Lumbee Tribe to contract directly with the Secretaries of the

Departments of the Interior and Health and Human Services to provide services to Lumbee members authorized by the Johnson-O'Malley Act and the Snyder Act; these two acts provide the basis for most services to individual members of Federally recognized Indian tribes. The subsection serves as a substitute for the authority found in the Indian Self-Determination Act that authorizes direct contracts with tribes for the delivery of those same services. As a result, the members of the Lumbee Tribe shall receive these services outside the normal contracting process and, in accordance with subsection (a), only when Congress passes a budget that specifically includes funding for Lumbee services. The Federal agencies that provide programs under the Snyder and Johnson-O'Malley Acts submit annual budget requests that typically list costs of those various programs. Since Lumbee tribal members cannot participate in those programs except through direct funding to the tribe, this subsection effectively requires that the Lumbee services appear as a separate line item in those agencies' budgets. Lumbee tribal members cannot receive the usual Federal Indian services otherwise. If the Congress does not pass a budget that includes the separate item for Lumbee tribal members' services, then Lumbee tribal members shall not receive services authorized under the Snyder and Johnson-O'Malley Acts. This subsection also provides that nothing in this direct funding mechanism for the delivery of services to Lumbee tribal members shall be construed as affecting the tribe's immunity to suit or its trust relationship with the United States.

The combined effect of the provisions dealing with Indian services for Lumbee tribal members is to condition the delivery of services upon the appropriation by Congress of agency budgets that reallocate program funding for direct delivery of services to the Lumbee Tribe. These provisions dealing with the delivery of Lumbee services reflect an attempt to balance three goals. First, these provisions separate out funding for Lumbee tribal services from those provided to other Indian tribes and specifically identify the cost of providing services to Lumbee tribal members. With the cost of Lumbee services flagged in this manner, the Lumbee Tribe will bear responsibility for justifying the proposed budget to Congress. Congress can increase the agencies' funding levels to reflect the additional cost of services to Lumbee tribal members if it so chooses, but H.R. 334 does not require such an increase. Second, these provisions allow the Lumbee Tribe greater flexibility and control in the formulation and delivery of services to tribal members. Since the bill bypasses the usual contracting processes for the delivery of services to tribal members, the Bureau of Indian Affairs has less control while the tribe has greater control in the process. By reducing bureaucratic control, this bill will also result in a more cost effective delivery of services to Lumbee tribal members. Finally, these funding provisions acknowledge the necessity of fiscal restraint by requiring reallocation of program funds within existing funding levels, unless Congress decides to do otherwise. In sum, the bill will not require additional funding for Federal agencies that service Indian tribes, but identifies the amount required for Lumbee services should the Congress decide when it appropriates a budget including Lumbee services to later to adjust the agencies'

overall funding level to accommodate this increase in the service population.

SECTION-BY-SECTION ANALYSIS

Section 1 titles the bill the "Lumbee Recognition Act."

Section 2 amends the preamble to the Act of June 7, 1956 by incorporating Congressional findings that the Lumbee Indians of Robeson County, North Carolina: (1) are descendants of North Carolina Indian tribes, mainly Cheraw; (2) have been recognized by the State of North Carolina since 1885; (3) have sought Federal recognition since 1888; and (4) are entitled to Federal recognition as a distinct Indian community.

Section 3 amends the 1956 Act by striking section 2 and inserting the following new provisions to that Act:

Section 2(a) provides for Federal recognition of the Lumbee Tribe of Cheraw Indians of North Carolina and for application to such tribe of all Federal laws of general application to Indians and Indian tribes.

Section 2(b) provides that Indians in Robeson or adjoining counties who are not enrolled in the Lumbee Tribe of Cheraw Indians are eligible to petition separately for Federal recognition.

Section 3(a) provides that members of the Lumbee Tribe of Cheraw Indians of North Carolina are entitled to Federal services when funds are appropriated for such services and that members of the tribes residing in Robeson County and adjoining counties will be deemed to be resident on or near an Indian reservation. This section is intended to delay the delivery of Bureau of Indian Affairs and Indian Health Services only to the tribe, pending the appropriation of funds to pay for such services. It is not intended to affect those programs and grants which the tribe now receives from other Federal agencies because of its status as a state recognized Indian tribe.

Section 3(b) provides that, upon verification of a tribal roll under section 4 by the Secretary of the Interior and the Secretary of Health and Human Services shall develop budgets to provide services to members of the tribe. The Secretaries are required to submit statements of needs and budget with their first budget requests following the fiscal year in which the roll is verified.

Section 3(c)(1) provides that the tribe shall administer funds provided through the Secretary of the Interior and the Secretary of Health and Human Services, through a direct annual funding agreement between the Secretaries and the tribe, which agreement shall specify services and auditing procedures. Section 3(c)(2) provides that the agreement in (1) shall be in lieu of contracting under the Self-Determination Act. Section 3(c)(3) provides that the Act shall not modify or diminish the sovereign immunity of the Lumbee Tribe from lawsuit or terminate any trust responsibility of the United States to the tribe.

Section 4(a) provides that the Lumbee Tribe of Cheraw Indians will organize and adopt a constitution and bylaws consistent with this Act which will take effect after being filed with

the Secretary of the Interior and that the Secretary will assist the tribe in all these matters.

Section 4(b)(1) provides that until the tribe adopts a constitution, its membership will consist of all individuals named in the tribal membership roll which is in effect on the date of enactment of the Act. Section 4(b)(2) provides for a 180 day enrollment period, provided the individual is eligible for Lumbee enrollment and is not a member of another Indian group or tribe. Section 4(b)(3) provides for Secretarial review and verification of the tribal roll.

Section 5(a)(1) provides that the State of North Carolina shall exercise civil and criminal jurisdiction over Lumbee Indians. Section 5(a)(2) authorizes the Secretary of the Interior to accept a transfer of jurisdiction from the State subject to an agreement by the Tribe and the State. Section 5(a)(3) stipulates that the application of section 109 of the Indian Child Welfare Act is excepted from the application of the rest of section 5(a).

Section 5(b) provides that the 1934 Indian Reorganization Act shall apply to the Lumbee Tribe with respect to lands within the exterior boundaries of Robeson and adjoining counties in North Carolina so that the Secretary of the Interior may acquire and place lands in trust for the tribe.

Section 6(a) authorizes appropriation of such funds as may be necessary.

Section 6(b) adds a proviso that in the first fiscal year that funds are appropriated, the appropriate House and Senate authorizing Committees will have 60 days to review the tribe's spending proposals.

VASSAR COLLEGE,
DEPARTMENT OF HISTORY,
Poughkeepsie, NY, October 18, 1989.

Hon. CHARLIE ROSE,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN ROSE: I am happy to agree to your request of 3 October 1989 that I expand upon the comments I made in my letter of 18 September 1989 to Congressman Udall, supporting the effort to extend federal recognition to the Lumbee Tribe of Cheraw Indians.

As I noted in that letter, I have been working on the Siouan tribes of the southern piedmont for some ten years now, and have recently published a book with University of North Carolina Press, entitled The Indians' New World: Catawbas *and* their Neighbors from European Contact through the Era of Removal. In writing this book it was not my intention to investigate the tribal origins of the Lumbees; however, in the course of my research I tried to learn everything I could about (as the book's title suggests) Catawbas and their neighbors, for I knew that Catawbas were a nation of nations, made up of a wide variety of native peoples of the Carolinas and Virginia; without some understanding of the history of these other groups I could not fully tell the Catawba Nation's story. Hence it was my strategy to take notes on every reference to Indi-

ans in these colonies, including (but, I emphasize, by no means limited to) not only Catawbas proper but also Waterees, Waxhaws, Pedees, Winyaws, Etiwans, Waccamaws, Saponis, Tutelos, Cape Fears, Cheraws, and Saxapahaws. Thus, while I am not an expert on the Lumbees, and do not claim to have seen every extant source from the colonial period, I do feel that I can speak with some authority about the possible historical origins of the Lumbee people. I know pretty well the available candidates for this distinction, and it is my judgment, following the distinguished line of scholars that began with John Swanton and runs through professors Sturtevant and Fogelson to Dr. Campisi, that the Cheraws are the most likely principal tribe. Let me lay out for you the foundation of that judgment.

The first point to make is to echo Dr. Campisi and others in saying that Carolina Indians in general, and natives in that part of Carolina in particular, are among the most poorly documented peoples in American history. The paucity of records on colonial Carolina generally is almost a commonplace among early American historians; compared to other colonies, the record is extraordinarily thin. This is even more true for the Indians of this region, as I learned to my dismay in the course of my research. Except for John Lawson's account, Carolina Indians have no colonial chronicler; they lack the voluminous missionary and official records that do so much to illuminate the lives and fates of native peoples elsewhere in the eastern United States.

What is true of Carolina generally is even more true of that part of North Carolina that is home to the Lumbees. For much of the colonial period, this region was a gray area, a disputed border between the two Carolinas, so officials (and therefore official scribes) tended to overlook it. So, too, did travelers, who preferred to go by way of the coast or through the piedmont. (As an aside, I will say that one of the reasons native people survived in that area is the same reason we know so little about the origins of those people: it was considered a backwater of little interest or use to whites, so displaced Indians could coalesce there free from the destructive pressures faced by other remnant groups. This habit of moving out of the way and surviving was common among Indians in colonial times.) In sum, while there *may* be more evidence on the question of the Lumbees' tribal origins, I would not be surprised if there weren't.

To say that we can know little about the natives of the Carolinas is not to say that we can know nothing at all, however. (I have just written a long book that is testimony to this fact.) The place to begin discussing what we do know, it seems to me, is to accept as given (as everyone I have read or spoken to does) that Lumbees today are indeed Indians, and to consider other possible candidates besides the Cheraws for the designation of Lumbee ancestor. Cherokees? These people were far away in colonial times, and would have had to go through Catawba territory to migrate to Drowning Creek; I have seen no evidence that they ever got farther east than short visits to the towns along the Catawba River. Catawbas? In all of my research I have come across nothing that would support a theory about fragments of the Catawbas migrating east from their piedmont home. Cape Fears? These mysterious In-

dians (their own name for themselves is not even known) were closer geographically, but during the Yamasee War of 1715 a punitive expedition of colonists and Tuscaroras from North Carolina destroyed the Cape Fear towns and carried off eighty prisoners (out of a population of 206); survivors, according to a report in 1731, were few in number and buried among the South Carolina colonial settlements due to their fear of Iroquois attacks. Tuscaroras? Again, they lived close enough to be candidates, but I have seen no evidence to suggest that after their devastating defeat by colonial and native forces in the Tuscarora War (1711–1713) they headed into the region in question. Rather, their dispersion followed a different pattern: a few, recruited by colonial officials, settled on the coast south of Charleston, South Carolina; many headed north to join the Iroquois in New York; and a few remained in their North Carolina homelands along rivers well to the north. Pedees? Another mysterious group with a claim based on proximity. My own guess is that some did end up among those who became Lumbees. However, Pedees probably were a small tribe, and we know that after the Yamasee War they scattered in three different directions: some to the Catawba Nation, some near Charleston, and some north of the Santee River, probably along Winyaw River. It seems unlikely that there would have been enough Pedees left to form the core of yet another group. Waccamaws? Proximity and numbers (610 in 1715) make this group a likely candidate, and, as with the Pedees, I suspect that some Waccamaws did become Lumbees. However, Waccamaws, like Cape Fears, paid a high price for their resistance to colonists: they fought on after most tribes made peace ending the Yamasee War, and in 1720 lost sixty people to death or enslavement in a "small war" with South Carolina. Add to this the number who went to the Catawbas and another group that ended up among the South Carolina colonists, and there are questions about this Siouan people's ability to serve as the charter member of a new group on Drowning Creek. Keyauwees? Like Pedees and Waccamaws, this is a Siouan group in proximity to the region in question, and some probably found their way there. My reading of the sources indicates, however, that Keyauwees were usually of secondary importance—satellites, if you will—to others, particularly Cheraws.

Singling out Cheraws by the process of elimination, while a useful exercise, is hardly conclusive. But there are positive reasons for considering Cheraws as the most likely principal tribal ancestor as well, in addition to the evidence uncovered by Dr. Campisi (evidence that I will consider below). They were in the area and knew it well, having settled along the Pee Dee River in the first decade of the eighteenth century. They also had wide knowledge of the lands surrounding them, and therefore would have known of Drowning Creek and its utility as a positive haven. Some of that knowledge came from years of hunting deer; Cheraws were heavily involved with Virginia traders as late as 1718, and traded with South Carolina thereafter. In addition, they knew the territory from time spent traveling back and forth on diplomatic missions; for example, my records show Cheraws stirring up trouble for colonists during the Yamasee War by rallying, among others, Enoes, Pedees, Saxapahaws, and Waccamaws. They are also good can-

didates to form the core of a polyglot group, not only having contacts with the above Siouan groups but also incorporating at one time or another with Enoes, Keyauwees, and Pedees. Finally, their population was large enough (510 in 1715), and there is no record of their having suffered the heavy casualties that struck the Cape Fears and Waccamaws.

One common reason for dismissing the Cheraws' claim is the well-know fact that in the second quarter of the eighteenth century Cheraws migrated from the Pee Dee River to the Catawba River and joined the Catawbas. Some certainly did: there was a Cheraw Town in the Catawba Nation at least until 1759, there were Cheraw chiefs there at least until that date, there are hints of a distinct Cheraw identity among the Catawbas as late as the mid-nineteenth century. All that is clear enough; the problem is that there is no reason to assume that those who joined the Catawbas were the *only* Cheraws around in the eighteenth century. Indeed, my research suggests that there was probably another group of Cheraws. I argue in my book that the decision over whether to join the Catawbas shattered these beleaguered remnant groups into fragments. Unlike the fragments of Waccamaws and Pedees that did not join Catawbas (fragments whose later history in the low country we can at least glimpse), and splinter group of Cheraws, as far as I can discern, disappeared from the records. In a moment I will explain why I think they disappeared. First let me explain why I think there were two groups of Cheraws.

Whatever their location in the sixteenth century when the Spanish explorers came through, by the second half of the seventeenth century Cheraws were in southwestern Virginia, on the Dan and Staunton Rivers. There they had not one but two towns, Upper Saura Town and Lower Saura Town, sites that, long after the Cheraws abandoned them in the early 1700s, were identified as such by colonists. Once Cheraws settled on the Pedee they may have coalesced in one village (as a 1715 census indicates); however, certain hints in the documentary records suggest that the older town divisions persisted. First, their behavior in the Yamasee War is curious. Cheraws, like Catawbas, quickly recognized their mistake in attacking South Carolina in the spring of 1715, and by July were negotiating for peace. Yet some Cheraws (unlike Catawbas) continued attacking South Carolina's northern frontier as late as the spring of 1718. This makes one wonder whether, like the Tuscaroras in 1711, Cheraws did not split apart over the question of war and peace with their colonial neighbors. Second, in the 1720s and 1730s—at least—there apparently were two groups of Cheraws, one living among the Catawbas and one still (with Pedees and probably Keyauwees) along the Pee Dee. There was a Cheraw/Waccamau town in the Catawba Nation as early as 1727, a time when William Byrd II and other knowledge colonists noted that Cheraws were still along the Pee Dee. Even more interesting is evidence from the late 1730s. On 6 July 1739, the Catawba chief and eight Catawa warriors arrived in Charleston to discuss with the South Carolina Council their troubles with Virginia; with them were John Harris, "King of the Charraw Town in the Catawbas Nation," and Jemmy, "Warriour of the Charraw Town in the Catawbaw Nation." This fits the accepted wisdom about Cheraws

among the Catawbas. What does not fit is what happened in the same South Carolina Council chamber the previous month, when the trader John Thompson (mentioned in the Lumbee petition) was called to account for causing trouble for settlers on the Pee Dee River by stirring up the Cheraw (and Pedee) Indians against them. Thompson had bought the land from the Cheraws in August 1737 (Robert, the Cheraw chief—clearly a different one from Harris—had signed the land conveyance, along with fourteen headmen); now, the aggrieved settlers claimed, he was apparently telling the Indians the land was still theirs, and they were—even that spring—causing trouble about it. This seems to me clear evidence that two groups of Cheraws existed in 1739: one, under Harris, was on the Catawba; the other, under Robert, resided on the Pee Dee.

What happened to Robert's people? I think they moved to Drowning Creek. In 1746 those Cheraws and Pedees among the Catawbas, tired of relentless attacks by enemy Indians, talked of plans "to retire to some place of greater safety, where they might have fewer Enemies." In the end nothing came of these plans, but I believe that the other Cheraws (and probably some Pedees, Waccamaws, and Keyauwees), tired of attacks by enemy Indians and aggressive settlers, did indeed "retire," and that their "place of greater safety" was Drowning Creek.

If so, why are we unable to trace them? Part of the problem is their isolated location, as I noted above. But I also feel that part may have been deliberate: there was little wisdom, in that climate, in advertising the fact that one was a Cheraw, especially if (as I surmise) these were the Cheraws who had continued to attack South Carolina after the Yamasee War (and also hit North Carolina in 1717). It was better to go underground, as I believe they did.

This brings me to Dr. Campisi's evidence. To me the most suggestive sources he has uncovered to make the Cheraw connection are Gov. Dobb's comments in 1754 (Dobbs's characterization of these people as a tough bunch fits, by the way, colonial characterizations of Cheraws made in the 1710s), the 1771 reference to "the Charraw Settlement," and the 1773 list of names. The 1773 names are especially intriguing, because they connect this group back in time to the 1737 land purchase from Cheraws (Groom) and forward in time to present-day Lumbees (Locklear, et al.). (On Groom, I should add that it was common for Indians to take the name of colonists they knew and respected; hence these people may have been lineal descendants of Groom, who had married an Indian, or they may have been descendants of Indians who knew him.) The 1771 reference is equally interesting: this is not an "old town," or abandoned Indian village, like the ones in Virginia; nor do I see how it could refer to a colonial community. Taken with all of the other evidence, I think it indicates that some memory of tribal origins persisted, and that those origins were Cheraw.

I fear that my long discourse has tested your patience, and the patience of others interested in the Lumbee case. But I felt that the issue is tangled enough, and important enough, to warrant a detailed discussion of my reasoning. I hope that you will find it both interesting and useful.

With best wishes, I am
Yours sincerely,

JAMES H. MERRELL,
Associate Professor.

WELLESLEY COLLEGE,
DEPARTMENT OF ANTHROPOLOGY,
Wellesley, MA, September 25, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Senate Select Committee on Indian Affairs,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR INOUYE. The history of the Lumbee tribe's relationship with the federal government has centered on the desires of the tribe to receive federal assistance, particularly in the area of education. This, in turn, has led to efforts to achieve federal recognition through congressional acknowledgment of the tribe's name. The tribe's efforts to clarify its status vis a vis the federal government are the subject of this letter.

Until the 1880's, the tribe had little contact with the federal government. In 1885 tribal leaders petitioned the legislature of North Carolina, through their legislator and friend Hamilton McMillan, for state recognition and assistance in establishing an all-Indian school system. The required legislation was passed in 1885, recognizing the tribe, giving it the name "Croatan," and establishing a separate Indian school system. Two years later, the tribe petitioned the legislature for assistance in establishing a teacher's training institution. The following year, 1888, the tribe made its first request to Congress for educational assistance.

The tribal leaders waited two years before receiving an answer to their request. In 1890, Commissioner of Indian Affairs T.J. Morgan responded to tribal leaders, telling them that because of insufficient funds to educate an estimated 36,000 Indian children already the responsibility of the federal government, "* * * I do not see how I can consistently render any assistance to the Croatans or any other civilized tribe" (emphasis added). The implication of Commissioner Morgan's statement is clear; had there been sufficient funds the Lumbee tribe would have been eligible to receive assistance.

The Lumbee tribe continued its efforts to receive federal help. It petitioned Congress in 1895, and had legislation introduced on its behalf by Congressman John D. Bellamy in 1899. Again, in 1905, it petitioned Congress for assistance.

By 1900 the tribe found that the name given it be the North Carolina legislature—Croatan—had been shortened by whites to "Cro," and was being used as a racial slur. Consequently, the tribe asked the legislature to change its name to a more neutral, descriptive one. In 1911, the legislature accommodated the tribe by changing the name to the "Indians of Robeson County." That name did not please some of the tribal members, so in the same year, the legislature agreed to another name change, this time to "Cherokee Indians of Robeson County," over the protest of the Eastern Band of Cherokees.

During this period the tribe renewed its efforts to get Congress to provide services and acknowledge its existence. In 1911, Senator Simmons and Congressman Godwin introduced legislation to establish "* * * a school for the Indians of Robeson County, North Carolina." The bill was sent to the Department of the Interior, which directed Charles F. Pierce, Supervisor of Indian Schools, to conduct an investigation. Pierce summarized his findings in an article entitled, "The North Carolina Tribe of Croatan Indians," published in 1913. Pierce had no doubt that the Lumbees were Indian, or that they constituted a tribe. Nor did he question the usefulness of federal assistance. His objection was based solely on "* * * the avowed policy of the government to require the states having an Indian population to assume the burden and responsibility for their education, so far as possible."

Despite Pierce's position, the bill passed the Senate and was sent to the House of Representatives, where hearings were held. After the hearings, the chairman of the committee determined that the bill was not necessary, since the Lumbees were eligible to attend the federal Indian boarding schools.

Undaunted, Senator Simmons and Congressman Godwin submitted legislation changing the tribe's name to conform with the state designation, and re-introduced the bill to fund a school for the Lumbee tribe. On April 28, 1914, the Senate passed Resolution 344 calling for an investigation into the status and conditions of the Indians of Robeson and adjoining counties. During the summer of 1914 Special Indian Agent O.M. McPherson visited Robeson County, completing his report before the end of the year. In it he rejected the argument that the tribe was of Cherokee origins, but was willing to accept "* * * that there was some degree of amalgamation between the Indians residing on the Lumbee River and the Cheraws, who were their nearest neighbors." He found that the tribal members were eligible to attend the federal Indian schools, but doubted that those schools would be of value because of their limited curriculum. He recommended that if Congress chose to fund a school, it should stress agricultural and mechanical skills.

The entrance of the United States into World War I delayed any further efforts by the tribe to gain federal recognition and assistance, but during the 1920's the tribe renewed its efforts to get Congress to consider its status. In 1924, Congressman L.R. Varser and Senator Simmons introduced legislation seeking to change the tribe's name to "Cherokee Indians of Robeson and adjoining counties," and providing educational assistance. Initially the Secretary of the Interior favored the bill, but later changed his position and the legislation died.

The tribe renewed its efforts in the 1930's, seeking both assistance and recognition. In 1932, Senator Josiah W. Bailey submitted a bill to recognize the tribe as "Cherokee Indians," but this legislation failed. The following year the tribe made another effort, this time designating themselves as "Cheraw Indians." The change in name was the result of the research of the eminent anthropologist and historian, John R. Swanton, who, after reviewing the available evidence, concluded that the Lumbee tribe descended from "* * * certain Siouan tribes of which the most prominent were the Cheraw and Keyauwee * * *" However, the name "Cheraw" pro-

voked a split within the tribe, with one group led by Joe Brooks and James Chavis favoring it because it would make possible the tribe's access to much needed resources, while another group led by D.F. Lowry, opposed it, fearing that it would lead to a loss of tribal control over the Indian schools. As a result, the bill failed.

After the passage of the Indian Reorganization Act (IRA) in 1934, the Brooks group renewed its efforts to achieve recognition. Guided by recommendations from Assistant Solicitor Felix Cohen, tribal leaders organized an effort to meet the criteria for a federal charter as provided in the act. They also set about establishing a land base for the tribal members. The remainder of the decade was spent on these two endeavours, and although they were unsuccessful in securing a federal charter, they were able to get land set aside for tribal members.

Following World War II, D.F. Lowry organized a group to advance a broad spectrum of social and political programs. One of its objects was to change the tribe's name. It must be kept in mind that the tribe had previously received recognition from the State of North Carolina. For tribal leaders, official recognition of their name was recognition of their tribal existence. Lowry and his supporters sought a name that had some neutrality about it; one that would avoid criticism from other Indian tribes, and would allow the tribe to keep control of its education system. Lowry chose the name "Lumbee tribe."

At first, the state legislature refused to adopt the change, insisting that the tribe hold a referendum. On February 2, 1952, the tribal members voted. The results were 2,109 in favor and 35 opposed. These results were conveyed to the legislature which enacted legislation stating that the tribe "* * * shall be known and designated as Lumbee Indians." In 1953, Congressman Carlyle introduced legislation to recognize the Lumbee Indians of North Carolina. The language of his bill was essentially the same as that approved by the legislature. After opposition from the Department of the Interior surfaced, the language of the legislation was altered to include the restrictions concerning the provision of services, but it included the same wording as found in the state law "* * * shall * * * be known and designated as Lumbee Indians of North Carolina * * *"

The purpose of the state legislation had been to change the tribe's name. Since the same language appeared in the federal legislation, from the tribe's point of view, it provided the long sought recognition of the tribe. Certainly, individuals did not need either state or federal permission to called themselves Lumbee Indians. By the state act the Lumbee tribe ceased to be referred to as "Indians of Robeson and adjoining counties," and became the Lumbee Indian Tribe. From the tribe's perspective, the federal act entitled "An Act Relating to the Lumbee Indians of North Carolina" recognized its existence. No other explanation makes sense.

Very truly yours,

JACK CAMPISI, *Ph.D.*

LUMBEE RIVER LEGAL SERVICES, INC.,
Pembroke, NC, May 28, 1993.

TAD JOHNSON,
Chief Counsel, Subcommittee on Native American Affairs,
Washington, DC.

DEAR MR. JOHNSON: Per the request of Arlinda F. Locklear, please find enclosed documents substantiating the Indian ancestry of the Lumbee tribe. I have enclosed a list identifying each document in each folder. You will also find a copy of the Historical Narrative, as well as section 83.7 A(1) of the Lumbee Petition for Federal Acknowledgment. If you should see any document that you need and we have not provided a copy, please advise me of such.

These documents are only a sampling of the archives we have on the Lumbee. There are scores of scholarly sources and newspapers that also substantiate Indian ancestry. If you should require any further documents, please do not hesitate to call.

Sincerely,

CYNTHIA L. HUNT,
Indian Law Unit.

Enclosure.

Aug. 11, 1890 (Folder 1) Ltr., T.J. Morgan, Commissioner of Indian Affairs, to W.L. Moore, denying educational assistance to the Croatan in light of state assistance, this was the response to the 1888 Petition to Congress for educational assistance. (Copy from O.M. McPherson Report.)

Jan. 31, 1900 (Folder 2) Remarks of Honorable John D. Bellamy before House Committee on Indian Affairs on H.R. 4009.

Feb. 2, 1900 (Folder 2) Remarks of Bellamy before full House.

March 2, 1912 (Folder 3) Letter from Charles F. Pierce (Supervisor of Indian Schools, Fifth District), Pipestone, Minnesota, March 2, 1912, to the Honorable Commissioner of Indian Affairs. CITE: Record Group 75, Records of the Bureau of Indian Affairs, 23202–1912—Cherokee School–123. National Archives.

Feb. 14, 1913 (Folder 4) U.S. House Committee on Indian Affairs Hrgs. on S. 3258.

Oct. 1913 (Folder 4 B) Charles F. Pierce, "The NC Tribe of Croatan Indians," Indian School Journal 10–12.

Sep. 19, 1914 (Folder 5) McPherson, O.M., Indians of North Carolina: A Report on the Condition and Tribal Rights of the Indians of Robeson and Adjoining Counties of North Carolina. U.S. Senate Document 677, 63rd Congress, 3rd Session. Washington, U.S. Government Printing Office, 1914.

Dec. 11, 1923 (Folder 6) Letter from James E. Henderson, Superintendent, Cherokee Agency, Cherokee, NC, December 11, 1923, to the Commissioner of Indian Affairs, Washington, D.C., with accompanying report. CITE: 93807–1923—Cherokee Classified Files, 1907–1939. National Archives.

Jan. 23, 1934 (Folder 7) Senate Report No. 204 recommends amending S. 1632; suggests clarifying "status" but avoiding federal "wardship" or other gov't rights.

May 23, 1934 (Folder 8) House of Representatives Report Number 1752 "Siouan Indians of Lumber River" (to accompany H.R. 5365) recommends identical amendment as in Senate Report No.

204. Report by renowned anthropologist, John Reed Swanton, entitled "Probable Identity of the 'Croatan' Indians," is quoted in full on pages 3–6.

Jul. 9, 1935 (Folder 9) Fred A. Baker Report on Siouan Tribe of Indians of Robeson County, July 9, 1935. CITE: Record Group 75, Central Classified File 1907–1939, File 36208–1935–310—General Services. National Archives.

Oct. 1935 (Folder 10) Pearmain, John, "Indian Office Handbook Of Information. 'Reservation':—Siouan Tribe Of Indians Of Robeson County, North Carolina." October, 1935. CITE: unknown. Reference could not be found in National Archives indexes. May come from the Bureau of Indian Affairs.

Nov. 11, 1935 (Folder 11) "Report of John Pearmain, Assistant Regional Specialist-Indian Rehabilitation Division, Resettlement Administration:—on condition of the Indians of Robeson County, North Carolina." CITE: The title page was found filed with the Fred A Baker Report (#5 above). Most of the rest of the November 1935 Pearmain Report is Record Group 75, Central Classified Files 1907–1939, File 64190–1935–066. National Archives.

Apr. 7, 1936 (Folder 12) D'Arcy McNickle Report of April 7, 1936, "Re: Indians of Robeson County, North Carolina." Written as Part I of a "Memorandum to the Commissioner." CITE: See #9, below.

May 1, 1936 (Folder 13) D'Arcy McNickle Report of May 1, 1936, "Re: Indians of Robeson County, North Carolina." Written as Part II of a "Memorandum". CITE: File 64190–1935–006–General Services, Part I. National Archives.

The following letters and memos are included in this report:

1916—U.S. Dept. of Interior, Secretary, ltr. to Chairman, House Committee on Indian Affairs, recommending in connection with H.R. 11332, a boarding school for Indians in Robeson County.

Feb. 11, 1916—Ltr., Assistant Commissioner of Indian Affairs, to Superintendent of Carlisle Indian Schools, suggesting that Carlisle admit the Indians of Robeson County.

Mar. 2, 1916—Commissioner of Indian Affairs ltr. to House Committee on Indian Affairs in connection with H.R. 11332, doubting "the wisdom of the Government's assuming the burden" of a boarding school for Indians of Robeson County.

Apr. 11, 1924—Ltr., DOT Secretary to Chairman of the House Comm. on Indian Affairs recommending passage of H.R. 8083.

Jul. 30, 1936 (Folder 14) Carl C. Seltzer Report to the Commissioner of Indian Affairs, Office of Indian Affairs, Washington, D.C.—"Cambridge, Massachusetts, July 30, 1936." CITE: Record Group 75, Entry 616, Applications and Other Records Relating to Registrations Under the Indian Reorganization Act of 1934, North Carolina. Two boxes (restricted). National Archives.

Summer 1968 (Folder 15) "Indian Communities in the Eastern States," by William C. Sturtevant and Samuel Stanley.

1936 (Folder 16) John R. Swanton, "Early History Of The Eastern Siouan Tribes" page 376. He identifies the Lumbee as descendants of the Cheraw Tribe.

1938 (Folder 17) John R. Swanton, "The Croatan Indians." pages 323–324.

1946 (Folder 18) John R. Swanton, The Indians Of The Southeastern United States, Smithsonian Institution Bureau of American Ethnology Bulletin 137 (Washington, U.S. Government Printing Office, 1946), page 110.

The Cheraw Indians "are again mentioned in 1768, and ultimately part of them probably united with the Catawba and became wholly merged with them though a part are undoubtably represented among the Siouan Indians of Lumber River."

Aug. 12, 1988 (Folder 19) Testimony of Vine Deloria, Jr. on S. 2672. Testimony of William C. Sturtevant on S. 2672.

Oct. 18, 1989 (Folder 20) Ltr., Dr. James Merrell to The Honorable Congressman Rose.

Apr. 28, 1992 (Folder 21) Ltr., Dr. Jack Campisi to Honorable Daniel K. Inouye, Chairman, Select Committee on Indian Affairs.

May 5, 1992 (Folder 22) Rebuttals to Report by Kenneth Carleton, Includes letters from: Dr. William Sturtevant, Dr. Karen I. Blu, Dr. Jack Campisi, Dr. Raymond Fogelson, Dr. William A. Starna.

Also includes tribal resolutions supporting Lumbee recognition.

THE LUMBEE PETITION

83.7A(1) Repeated identification by Federal authorities

In 1885, Hamilton McMillan secured passage in the North Carolina General Assembly of an act recognizing the Lumbee tribe as Croatan, descendants of the Hatteras tribe and Raleigh's Lost Colony, and establishing a separate school system. From this point forward, no official governmental body at the state, local or federal level has questioned the tribe's Indian identity.

In 1888, the Lumbee made its first of several requests to the United States Congress for educational assistance.

Dec. 4, 1888—Petition of Croatans to Congress, received Dec. 4, 1888. Request for appropriation to complete Croatan Normal School and to train teachers; Referred to House Committee on Indian Affairs, which referred it to US Department of the Interior on Dec. 29, 1888, for a report. Copy on file at Lumbee River Legal Services (LRLS). (See McPherson B report: Indians of North Carolina: A Report on the Condition and Tribal Rights of the Indians of Robeson County and Adjoining Counties of North Carolina, Document Number 677, 63rd Congress 3d Session (1915).

Aug. 11, 1890—T.J. Morgan, Commissioner of Indian Affairs, letter to W.L. Moore, denying educational assistance in light of state assistance. (In McPherson, Exhibit 138 Page 40).

Dec. 13, 1899—H.R. 4009, 56th Congress, 1st Session. Bill introduced in US House of Representatives by Honorable John D. Bellamy for educational assistance for Croatans (see 33 Congressional Record 372 (House)).

Jan. 31, 1900—Remarks of Honorable John D. Bellamy on the Origins and History of the Croatan Indians. (See 33 Congressional

Record 372 (House, Dec. 13, 1899); before House Committee on Indian Affairs; re bill for Croatan education, H.R. 4009.

Feb. 2, 1900—Remarks of Honorable John D. Bellamy Before the full House, regarding Croatan education bill, 33 Congressional Record 1457–58 (House).

In 1910 the Lumbee made their first attempt to have the federal government enact a tribal name for the Lumbee.

Jan. 24, 1910—H.R. 19306, 61st Congress. Bill to change name Croatan Indians to Cherokee Indians, dated Jan. 24, 1910; introduced, but no record of passage.

After this aborted attempt the tribe turned their energies back to educational assistance.

Aug. 16, 1911—S. 3258, 62d Congress, 2d Session. Bill dated Aug. 16, 1911, introduced in Senate by Mr. Simmons, read twice, and referred to Commissioner on Indian Affairs; to establish "a school for the Indians of Robeson County, North Carolina" to appropriate $50,000 to erect buildings, and to authorize $10,000 annually to maintain the school; passed in Senate.

Mar. 2, 1912—Report by Supervisor of Indian Schools on visit to Robeson County. Report of Charles F. Pierce transmitted to 62d Congress 2d Session; referred to in letter from First Assistant Secretary of the Department of the Interior (A.A. Jones) to Honorable Henry F. Ashurst, Chairman, U.S. Senate Committee on Indian Affairs, dated June 6, 1914.

Apr. 4, 1912—Hearings before the Senate Committee on Indian Affairs on S. 3258 to acquire a site and erect buildings for a school for the Indians of Robeson County, N.C., and for other purposes (62d Congress 2d Session, Apr. 4, 1912).

Aug. 8, 1912—S. 3258, 62d Congress, 2d Session, passed in Senate (died in House committee as an amendment to H.R. 20728).

Feb. 14, 1913—US House of Representatives, Committee on Indian Affairs, Hearings on S. 3258 to acquire a site and erect buildings for a school for the Indians of Robeson County, NC, and for other purposes, February 14, 1913 (Wash., DC: United States Government Printing Office, 62d Congress, 2d Session, 1913).

S. 3258 referred to the House on Aug. 8, 1912 wherein it was referred to Committee on Indian Affairs; bill apparently died in the House Committee; includes "Statement of Honorable A.W. McLean," pages 17–19, and his "Historical Sketch of the Indians of Robeson County, NC," pages 19–25.

The final disposition of S. 3258 was decided in the House Committee. The Chairman of the Committee felt that eligibility of the Indians of Robeson County to attend federal Indian boarding schools, such as Carlisle Indian School, was sufficient, and that the expenditure of the sums for a new, regional Indian School was not warranted.

The Lumbee efforts for educational assistance had raised in the mind of members of Congress concern over their living conditions and tribal rights. On April 28, 1914 the Senate passed Resolution 344 calling for an investigation into the tribal rights of the Indians of Robeson County. A second resolution concerning changing the tribal name to Cherokee Indians of Robeson County was passed on June 30, 1914.

Apr. 28, 1914—Senate Resolution 344, 63d Congress, 2d Session. Submitted by Mr. Simmons; referred to Committee on Indian Affairs; calling for investigation into status and condition of Indians of Robeson and adjoining counties of NC; 51 Congressional Record 7356 (63d Congress, 2d Session, Senate).

Jun. 30, 1914—Senate Resolution 410, 63d Congress, 2d Session Authorizing study of Cherokee Indians of Robeson County by Bureau of Indian Affairs.

In response to the Resolution, the Office of Indian Affairs detailed Special Indian Agent O.M. McPherson to make an investigation.

McPherson wrote numerous interested parties in an effort to gather information on the tribe. In July 1914 he began an extended visit in Robeson County. He was welcomed by mass meetings of Indians on numerous occasions, and traveled around to different communities. His report, dated September 19, 1914, was transmitted to the Senate under date of January 4, 1915.

Sep. 19, 1914 Senate Report Number 677, 63d Congress, 3d Session [McPherson, O.M. (Special Indian Agent)], Report to the U.S. Senate, "Indians of NC." A Report on the Condition and Tribal Rights of the Indians of Robeson and Adjoining Counties of North Carolina.

Report in response to Senate Resolution 344 and Senate Resolution 410 (dated June 30, 1914); Report is Document Number 677, 63d Congress, 3d Session (1915).

In briefest summary, the report concludes that the tribe is probably descended from Raleigh's Lost Colony at least in part, with admixtures of Indian nations other than the Hatteras, and that the tribe has never enjoyed a trust relationship with the federal government. McPherson recommended the establishment of a federal school. A federal school bill was again introduced in the U.S. House in 1916. The Secretary of the Interior corresponded with the House Committee on Indian Affairs about the school bill, and the Assistant Commissioner of Indian Affairs wrote to Carlisle, suggesting that the school enroll Croatans. In March, the Commissioner of Indian Affairs wrote the Chairman of the House Committee, expressing doubt about "the wisdom of the Government's assuming the burden" of a boarding school for the Indians of Robeson County.

1916—H.R. 11332, concerning Indian Schools, and did not pass.

1916—US Department of the Interior, Secretary letter to Chairman, House Committee on Indian Affairs, recommending in connection with H.R. 11332, a boarding school for Indians in Robeson County.

1916—US Department of the Interior, Secretary letter to Chairman, Senate Committee On Indian Affairs, recommending in connection with H.R. 11332, a boarding school for Indians of Robeson County.

Feb. 11, 1916—US Department of the Interior, Office of Indian Affairs, Assistant Commissioner letter to Superintendent, Carlisle Indian School, suggesting, since school enrollment is below capacity, that Carlisle admit "those of the Cherokee (Croatan) from North Carolina who will be eligible in accordance with the course of study" (McNickle 1936: 7).

Mar. 2, 1916—US Department of the Interior, Office of Indian Affairs, Commissioner of Indian Affairs letter to House Committee on Indian Affairs, in connection with H.R. 11332, doubting "the wisdom of the Government's assuming the burden" of a boarding school for Indians of Robeson County (Ibid. 8).

The bill did not pass. However, the following year, in 1917, an appropriation was made by the North Carolina General Assembly for the Cherokee Indian Normal School to establish an Indian Training School [1917 N.C. Laws, Chapter 163, Page 312]. On October 9, 1923, Mr. Ucker of the Indian Office in his survey of Eastern Indians south of the Ohio River reported that there were between 9,000 and 9,500 Cherokee Indians of Robeson County (Lumbee).

Oct. 9, 1923—Memorandum re Eastern Indian Survey, to Commissioner Eliot, Board of Indian Commissioners [Records of Board of Indian Commissioners, Reference Material, Eastern Indian Survey, RG 75, Entry 1395, National Archives], noting 9000–9500 Robeson County Indians.

During the 1920's and 30's the Lumbee made several unsuccessful attempts to have Congress change their tribal name and recognize them.

1924—H.R. 8083, 68th Congress, 1st Session, a bill to change the name "Croatan" to Cherokee Indians of Robeson and adjoining counties in NC, and permitting attendance at federal Indian Schools.

Apr. 11, 1924—US Department of the Interior, Secretary letter to Chairman, House Committee on Indian Affairs, recommending passage of H.R. 8083 (McNickle 1936: 9).

Jan. 2, 1925—Memorandum from Charles H. Burke, Commissioner of Indian Affairs, to the Secretary, US Department of the Interior, stating that the Indians of Robeson County are self-supporting and "no longer live in tribal status," and that they have never been recognized by the Department of the Interior. Written in response to inquiry by Senator Furnifold Simmons of NC dated Dec. 23, 1924 (Copy on file LRLS).

Aug. 24, 1928—Memorandum from E.B. Merritt, Acting Commissioner of Indian Affairs, to Secretary Edward, US Department of the Interior, in response to inquiry by William W. Ayre, West Englewood, NJ, recounting opinions of Mooney, McPherson, and McLean (RG 48, Indian Office, Croatan Indians, General, National Archives Records Service).

May 9, 1932—S. 4595, 72d Congress, 2d Session. Bill to recognize Robeson County Indians as Cherokee and to permit them to attend federal Indian Schools; introduced one of several such bills.

Mar. 26, 1932—Letter from John Collier, Executive Secretary, American Indian Defense Association, Inc. (Wash., DC), to Honorable J.W. Bailey, US Senate (Josiah W. Bailey Papers (Senatorial Series, Interior Department, 1932–1946, Indians of Robeson County, Box 310), Manuscripts Departments, Duke University Library).

Urging recognition of Robeson County Indians as "Cherokee" and transmitting bill and supporting memorandum drafted by Mr. Ellwood Morey, attorney for the Indians of Robeson County; memorandum refers to H.R. 8083, 68th Congress.

May 24, 1932—US Department of the Interior, Indian Office, memorandum of C.J. Rhoads, Commissioner of Indian Affairs, transmitted to Senate on S. 4595, 72d Congress, 2d Session. Adverse report on "Cherokee" bill; See Senate Report Number 204, 73d Congress, 2d Session (Jan. 23, 1934), pages 2–3, reprinting the memorandum.

In the latter part of 1932 Dr. John Reed Swanton was asked by the Commissioner of Indian Affairs to conduct an inquiry into the history of the Cherokee Indians of Robeson County. His report concludes that the Indians of Robeson County are descended from Cheraw and other Siouan stock. This report led to much activity over the next two years on whether the tribe should be named "Cheraw" or "Siouan Indians." [1933 J.R. Swanton (Smithsonian Institute), "Probable Identity of the 'Croatan' Indians," report to the Office of Indian Affairs, 1933, Smithsonian Institute Manuscript Number 73619, Wash., D.C.; 1933; Reprinted in Senate Representative Number 204, 73 Congress, 2d Session. (Jan. 23, 1934), pages 3–6.]

May 1, 1933—H.R. 5365, 73d Congress, 1st Session. Bill to name Robeson County Indians the "Cheraw Indians" and to recognize them as such; introduced by Clark of NC; referred to Committee on Indian Affairs.

May 1, 1933—S. 1632, 73d Congress, 1st Session. Bill paralleling H.R. 5365, 73d Congress, 1st Session (See Above)

Jan. 10, 1934—Letter from Harold Ickes, Secretary of the Interior, to Honorable Burton K. Wheeler, Chairman, Commissioner on Indian Affairs, US Senate.

Refers to letter from Wheeler dated May 11, 1933, requesting a report on S.1632; suggests clarifying "status" but avoiding federal "wardship" or other governmental rights; reprinted in Senate Report Number 204, 73d Congress, 2d Session (Jan. 23, 1934), pages 1–3.

Jan. 23, 1934—Senate Report Number 204, 73d Congress, 1st Session. Report (To accompany S. 1632) of the Committee on Indian Affairs: "Siouan Indians of Lumber River"; recommends amending S. 1632; suggests clarifying "status" but avoiding federal "wardship" or other governmental rights; reprinted in Senate Report Number 204, 73d Congress, 2d Session (Jan. 23, 1934), pages 1–3.

May 23, 1934—House Representatives Report Number 1752, 73d Congress, 2d Session. "Siouan Indians of Lumber River"—Report (To accompany H.R. 5365); recommends identical amendment as in Senate Report Number 204; Report is identical to Senate Report Number 204, except date, etc; subcommittee of the Committee on Indian Affairs apparently submitted a lengthy report, disagreeing with Secretary Ickes' suggestion that H.R. 5365 be amended from "Cheraw" to "Siouan" Indians, and recommending that the bill read (instead of "Cheraw") "Cherokee."

The passage of the Wheeler-Howard Act on June 19, 1934, [C. 576, Section 16, 48 statute 987] brought renewed hope for the Lumbee.

Feb. 1935—Letter from Joseph Brooks to the Commissioner of Indian Affairs, US Department of the Interior, requesting clarifica-

tion of rights of Robeson County Indians under the Wheeler-Howard Act, referred to Felix Cohen for answer (McNickle 1936: 11).

Apr. 8, 1935—Memorandum from Felix S. Cohen, Assistant Solicitor, US Department of the Interior, to the Commissioner of Indian Affairs (Ibid. 11–13).

Stating eligibility of "Siouan Indians of NC" to organize as a federal tribe under the Wheeler-Howard Act to the extent members "may be of one-half or more Indian blood."

Apr. 1935—Letter from Joseph Brooks to the Secretary, US Department of the Interior, seeking the Secretary's opinion in light of Felix Cohen's memorandum on Wheeler-Howard Act (Ibid. 13).

Apr. 25, 1935—US Department of the Interior, letter to Joseph Brooks, fully concurring in opinion of Assistant Solicitor Cohen re Wheeler-Howard Act (Ibid. 13).

Jun. 11, 1935—US Department of the Interior, Bureau of Indian Affairs, William Zimmerman, Jr., Assistant Commissioner of Indian Affairs, letter to Joseph Brooks requesting "a list of members of [the Siouan] group who are of one-half or more degree Indian blood and how this quantum of Indian blood may be established." (Copy on file LRLS).

Along with organizing efforts under the Wheeler-Howard Act the Lumbee began attempts in 1935 to obtain a major land resettlement project for the Lumbee. Cohen's memo of April 8, 1935 had gone far beyond the dry legal question of the Lumbee Tribe's eligibility under the Act and sketched out an ambitious social and economic plan for the tribe. This plan was the blueprint used by the tribe in pressing the Bureau of Indian Affairs for a farm project for the tribe.

Apr. 11, 1935—Joseph Brooks letter to John Collier. Letter proposed that tribe acquire unimproved land, transfer it to the US to be held in trust for the tribe, escrow funds either from the Public Works Administration or the Tribal Credit Fund to improve the land, and place on this land tribal members (Copy on file LRLS).

Apr. 12, 1935—Dr. W.C. Ryan, Director of Research on Planning and Development for the Indian Office, Memorandum to Felix Cohen expressing his unqualified support for the plan Cohen had sketched. Records of the Indian Board Commissioner, General Services, RG75, Entry 1651–1935–056, National Archives and Records Services, Wash., DC.

May 31, 1935—Joseph Brooks letter to John Collier describing the economic assistance proposed for two types of Indian families: a thrifty family, and a family totally without resources. Indian Office Files, File Number 3940–1935–361, Siouan Indians of NC, Bureau of Indian Affairs, Wash., DC.

June 3, 1935—John Collier letter to Joseph Brooks informing him that he is sending Indian Agent Fred Baker to Robeson County to work out a plan for land resettlement. Records of the Indian Board Commissioners, RG75, Entry 36208–35–Siouan–310, National Archives and Records Services, Wash., DC.

Mr. Collier's June 3, 1935 letter also asked Mr. Brooks, along with Mr. Baker, "to make recommendations looking to the enrollment [sic] of those members of the your tribe half-degree or more Indian blood, who would be entitled to organize under the Wheeler-Howard Act * * * please be assured of my great interest in your

project, and of my entire willingness to assist you in drawing up the project and presenting it to the Land Resettlement Administration." Clearly, the resettlement project and tribal organization were perceived of as proceeding hand in glove, under the sponsorship and with the support of the Indian Office.

Jun. 12, 1935—Fred Baker letter to Joseph Brooks informing him that he will arrive in Pembroke around June 15, 1935 (Copy on file LRLS).

Jun. 13, 1935—William Zimmerman, Jr., Assistant Commissioner, letter to Fred Baker giving instructions to Baker for this mission and stating objectives as the feasibility of buying land for the tribe which will be assigned to individual Indians with fee title remaining in the United States (Baker 1935; 1–2).

Jun. 28, 1935—James A. Gray, Head Agricultural Economist with the Raleigh Office of the Federal Relief Agency, letter to Dr. L.C. Gray, Land Utilization, Resettlement Administration, Wash., DC., supporting the proposed project and stating "I believe this would make a splendid project in resettlement because there is available within the area now occupied by the Indians land suitable for this purpose." (Baker 1935: Exhibit K).

Jul. 9, 1935—Fred A. Baker Report on Siouan Tribe of Indians of Robeson County, North Carolina. Baker wholeheartedly supported the project and stated "[we] feel strongly that the United States is justified in coming to the aid of the people already recognized by the laws of the State of North Carolina as Indians." US Department of the Interior, Bureau of Indian Affairs (Indian's Office's Resettlement Project Docket, Records of the Indian Board Commissioners, RG75, Entry 36208–1935–Siouan–310, National Archives and Records Services, Wash., DC.).

Sep. 9, 1935—Joseph Brooks letter to John Collier forwarding an agreement to take property on behalf of the tribe. Indian Office's Resettlement Project Docket, Records of the Indian Board of Commissioners, RG75, Entry 36208–1935–Siouan–310, National Archives and Records Services, Wash., DC.

Sep. 12, 1935—Joseph Brooks was interviewed by John Pearmain the Assistant Regional Specialist for the Indian Rehabilitation Division with the Resettlement Administration at the Indian Office on a wide variety of topics relating to the tribe, including its governmental organization. He reported 11,000 tribal members in Robeson County with 2,000 elsewhere. John Pearmain, Reservation: Siouan Tribe of Indians of Robeson County, North Carolina (Wash., DC, Bureau of Indian Affairs, Indian Office Handbook of Information, compiled Oct. 1935), pages 41–42.

Nov. 11, 1935—John Pearmain, Report on the Condition of the Indians of Robeson County, North Carolina (Wash., DC: Resettlement Administration Nov. 11, 1935) re Rural Rehabilitation Project No. NC–22. The Favorable Report notes "17 separate Indian communities in Robeson County," with "some 20 families across the line in South Carolina who might be included in the project." The tribe's ethnic isolation was also noted.

Nov. 1935—The plan called for the purchase of 8,000 acres. The plan appears to have been presented to President Roosevelt by his personal assistant, Rex. G. Tirgwell, and approved in late 1935. Resettlement Property Docket, Records of the Indian Board of Com-

missioners, RG 73, Entry 36208–35–Siouan 310, National Archives and Records Service, Wash., DC.

Jul. 31, 1936—Preliminary approval was given on November 21, 1935, and the project was approved in final form on May 27, 1936. Resettlement Administration, Special Reports Section, Finance and Control Division, Project Description Book (Wash., DC: US Resettlement Administration), Region IV: North Carolina: RI–NC–22 (Pembroke Farms).

Parallel with the Pembroke Farms project were efforts to have the Siouan tribe organized and federally recognized under the half-blood provision of the Wheeler-Howard Act, as outlined in the April 8, 1935, memorandum by Assistant Solicitor Fexlix Cohen.

Jun. 11, 1935—William Zimmerman, Assistant Commissioner of Indian Affairs, letter to Joseph Brooks requesting "a list of members of the [Siouan] group who are one-half or more degree Indian blood" and how this quantum of Indian blood may be established (Copy on file LRLS).

Jul. 18, 1935—Tribal enrollment listed by districts and numbers of heads of households submitted by the tribal council. Siouan Tribal Council, Enrollment of Siouan Indians of Lumber River, North Carolina. Approved by Siouan Tribal Council, May 18, 1935, Records of the Indian Board of Commissioners, RG75, Entry 39490–35–Siouan–361, National Archives and Records Service, Wash., DC.

Apr. 7, 1936—US Department of the Interior, Office of Indian Affairs, Memorandum of D'Arcy McNickle for the Commissioner of Indian Affairs, summarizing April 1936 visit to Robeson County. McNickle estimates that several hundred of the group would be eligible as of one-half or more Indian blood (Cohen 1936).

Apr. 8, 1936—Cohen Memorandum to Daiker referring to McNickle's Apr. 7, 1936 report stating that McNickle's estimate of several hundred of one-half Indian or more was probably quite conservative (Copy on file LRLS).

May 1, 1936—US Department of the Interior Office of Indian Affairs, Memorandum of D'Arcy McNickle for the Commissioner of Indian Affairs, summarizing historical relations between federal Indian Office and Robeson County Indians, in connection with blood-quantum study (Copy on file LRLS).

Also, in May, 1936, the whole tribal land resettlement project was shifted by Mr. Stewart of the Indian Office over to the Rural Settlement Administration in the Department of Agriculture on the grounds that the tribe was not officially recognized by the Indian Office so no funds could be obtained for the Indian Rehabilitation Project by the Indian Office. Precisely why this change in the Indian Office came about so suddenly, in the face of ongoing efforts by Collier, Zimmerman, Cohen, McNickle, Baker, Pearmain, and others to enroll under the Wheeler-Howard Act remains a mystery. A May 1, 1936 memorandum detailed the change in approach.

May 1, 1936—Edwin L. Groome, Indian Office, Memorandum to his superior, Mr. Stewart, stating that he has carried out Mr. Stewart's instructions and had on April 30, 1936 taken Mr. Joseph Brooks to Dr. Carl Taylor, Director of the Rural Resettlement Division, Resettlement Administration, and introduced Mr. Brooks as a "representative of a large group of people * * * and it appeared

that the Rural Settlement Division was the only agency * * * that might be able to render appropriate assistance" since the group was not a federally recognized tribe (Indian Office's Resettlement Project Docket, Records of the Indian Board Commissioners, RG75, Entry 36208–1935–Siouan–310, National Archives and Records Services, Wash., DC).

Just as unexplained as the immediate shift of the land resettlement project from the Indian Office to the Rural Settlement Administration was the shift in methodology of how blood quantum would be determined. The Indian Office has never faced the problem of determining blood quantum of members of such a large tribe in the absence of a solid base in tribal records. Several methodologies were considered and Felix Cohen recommended one in his memorandum of April 18, 1936 to Mr. Daiker that was reasonable and well received by the tribe. It entailed oral tradition, evidence of enrollment in Indian schools and other special Indian institutions maintained by the state. Further, a Commission, which would include tribal representatives, would set to sift through such evidence for a stated period and "to utilize a special jury of local Indians to decide questions of fact which might be presented by the Commission." However, instead of this method the Indian office decided to use a long drawn-out tedious process which included pseudo-scientific anthropometric analysis of head shape and measurements, skin pigmentation, hair, ears, eyes, nose, lips, teeth, as well as blood type measurements. This was a mockery and affront to Indian pride in Robeson County and met with very little success. The 1930 census for Robeson County had listed 12,404 Indians in the county. From this number only 108 asked to be tested by the Commission that was chaired by Dr. Carl C. Seltzer.

Jul. 30, 1936—US Department of the Interior, Office of Indian Affairs, Report of Carl C. Seltzer, Associate Anthropologist, Eastern Siouan Indian Commission, to the Commissioner of Indian Affairs, on June 1936 blood-quantum study of Robeson County Indians for Wheeler-Howard Act enrollment (Copy on file LRLS).

At a later date, Dr. Seltzer returned to Robeson County and examined 101 more applicants. Of the 209 applicants, the Secretary of Interior eventually certified 22 as having one-half or more Indian blood.

Feb. 24, 1938—US Department of the Interior, Bureau of Indian Affairs, John Collier, Commissioner of Indian Affairs, acknowledging 22 of 209 applicants as possessing one-half or more Indian blood (Copy on file LRLS).

Nov. 8, 1938—S.M. Belle, James E. Chavis, S.S. Lowrie, and Joseph Brooks letter to Honorable John Collier, Commissioner of Indian Affairs, US Department of the Interior, re recognition of Indian applicants under Indian Reorganization Act (Copy on file LRLS).

Dec. 12, 1938—William Zimmerman, Assistant Commissioner letter to Joseph Brooks confirming certification of 22 as having one-half or more Indian blood (Copy on file LRLS).

Needless to say, this methodology and results infuriated the tribe and created a distrust in the federal government that probably exists today. The tribe and its members over the next decade made

only a couple of overtures toward the federal government concerning recognition after this decade.

Jan. 28, 1939—US Department of the Interior, Office of Indian Affairs, John Collier, Commissioner, letter to Vestia Locklear, recognizing her as possessing one-half or more Indian blood and enrolling her under Section 19 of the Wheeler-Howard Act (Copy of file LRLS).

Jul. 3, 1942—US Department of the Interior, John Collier, Secretary, letter to D.J. Brooks, stating effect of 1938 recognition of 22 half-bloods (Copy of file LRLS).

Shortly after Dr. Seltzer's June 1936 visit, the Pembroke Indian Farm was established. An immediate conflict developed when McNair Investments of Laurinburg, a powerful statewide political force in neighboring Scotland County, manipulated the state political machine and pressured the Raleigh office of the Resettlement Administration to secure the appointment of one of its employees as federal civil service manager of the Pembroke Indian Farm. This outraged the leaders of the Siouan tribe, and Joseph Brooks immediately protested to the Indian Office that McNair Investments was one of the principal reasons for the massive Indian land loss through oppressive foreclosures in Robeson County.

Because of the political clout of McNair Investment in North Carolina politics, Edwin Groome was able to convince Mr. Stewart that the Indian Office should try to duck the problem.

Jul. 6, 1936—Groome, letter to Stewart, Records of the Indian Board of Commissioners, RG75, Entry 36208–35—Siouan—310, National Archives and Records Service, Wash., DC.

Clearly, the ploy was to put Brooks off in Washington and compel the tribe to contest the matter in Raleigh, the home turf of McNair Investment, in the hopes that the tribe's complaint would never reach the Indian Office through these channels or that some compromise could be reached without Indian Office involvement. However, over the next five years Joseph Brooks was to continue to exert his leadership over the Pembroke Indian Farm Project with the federal government which is set out in detail in Geoff Mangum's Legal History of the Lumbee, pp. 91–155.

The Pembroke Indian Farm and the Red Banks Mutual Association had a significant affect on the Lumbee Community for the next twenty years. The tribal leadership kept the federal government involved despite local white government and community leaders' attempts to gain some control over the project.

Jul. 31, 1936—US Resettlement Administration, Special Reports Section, Finance and Control Division, Project Description Book (Wash., DC: United States Resettlement Administration), giving figures from the final approved budget of May 27, 1936.

Jun. 26, 1937—George S. Mitchell, Resettlement Administration Regional Director, Region IV, letter to W.W. Alexander, Administrator, Resettlement Administration, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Administration (100), National Archives and Records Service, Wash., DC.

Nov. 17, 1937—Couch, Assistant to Regional Director, Farm Security Administration, Memorandum for Mitchell, re Organization of Pembroke and Wolfpit Projects, Farm Security Administration

Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC., General Correspondence (703–01), National Archives and Records Service, Wash., DC.

Dec. 8, 1937—Jesse A. Fletcher, deed to United States of America, Deed Book 8Z, Page 466, Robeson County, NC, Registry of Deeds, on File LRLS.

Feb. 1938—Petition of Members of Mount Moriah Church, Robeson County, NC, to the Honorable Josiah W. Bailey, Farm, Security Administration, Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, National Archives and Records Service, Wash., DC.

Feb. 11, 1938—Bailey, letter to W.W. Alexander, Administrator, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, General Correspondence (703–01), National Archives and Records Service, Wash., DC.

Feb. 24, 1938—Milo Perkins, Farm Security Assistant Administrator letter to Honorable Josiah W. Bailey, Farm Security Administration Project Records, NC, Project AD–NC–22, Pembroke Farms, Pembroke, NC, General Correspondence (703–01), National Archives and Records Service, Wash., DC.

Mar. 25, 1938—George S. Mitchell, letter to W.W. Alexander, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22–300, Red Banks Mutual Association, Box 148, Correspondence 1935–40, Folder 101 (Organization), National Archives and Records Service, Wash., DC.

Apr. 29, 1938—Joseph Brooks, telegram to W.W. Alexander, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, General Correspondence (703–01), National Archives and Records Service, Wash., DC.

May 4, 1938—C.B. Baldwin, Acting Administrator Farm Security Administration, letter to Joseph Brooks, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Property Operation and Disposition (900), National Archives and Records Service, Wash., DC.

May 4, 1938—Aaron, Report on Pembroke Farms, quoted in J.O. Walker, letter to W.W. Alexander, dated May 11, 1938, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, General Correspondence (703–01), National Archives and Records Service, Wash., DC.

May 8, 1938—Brooks, telegram to W.W. Alexander, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, General Correspondence (703–01), National Archives and Records Service, Wash., DC.

May 16, 1938—Mitchell, letter to Honorable J. Bayard Clark, Farm Security Administration Project Records, NC, RG96, Proj. AD–NC–22, Pembroke Farms, Pembroke, NC, General Correspondence (703–01), National Archives and Records Service, Wash., DC.

Jun. 12, 1938—H.C. Green, letter to C.B. Faris, Farm Security Administration Assistant Regional Director, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 148 (correspondence 1935–1940).

Jun. 23, 1938—Red Banks Mutual Association, Articles of Incorporation, Corporation Book, Page 188, Robeson County, NC, Registry of Deeds, in file LRLS.

Jun. 30, 1938—Walker, Memorandum for Milo Perkins, Farm Security Administration Assistant Administrator, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22–300, Red Banks Mutual Association, National Archives and Records Service, Wash., DC.

May 16, 1939—Irma Wallace, Red Banks Mutual Association Economist, letter to W.W. Alexander, Farm Security Administration Project Records 1935–1940, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, Folder A.

June 12, 1939—John H. Workman, Farm Security Administration Regional Educational Adviser, Memorandum to Howard H. Gordon, Regional Director Gordon, letter to W.W. Alexander, dated June 12, 1939, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, File 934, National Archives and Records Service, Wash., DC.

Jun. 26, 1939—Red Banks Mutual Association Board of Directors, 2d Special Meeting Minutes, [Dated July 1, 1939], Farmer's Home Administration Records of Cooperation Associations 1935–1954, NC, RG96, Project AD–NC–22, Red Banks Mutual Association, Pembroke, NC, Box 528, Organization, National Archives and Records Service, Wash., DC.

Aug. 3, 1939—C.B. Baldwin, letter to Howard H. Gordon, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Folder G (NYA), National Archives and Record Service, Wash., DC.

Sep. 22, 1939—Howard H. Gordon, letter to W.W. Alexander, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Folder A (General, 000–900), National Archives and Records Service, Wash., DC.

April 15, 1940—John Thompson, Red Banks Mutual Association, Treasurer, telegram to Mitchell, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Folder T (Red Banks Mutual Association), National Archives and Records Service, Wash., DC.

May 28, 1940—William LaRue, Farm Security Administration Security Administration Operations Adviser, Memorandum to C.B. Faris, Farm Security Administration Assistant Regional Director, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, National Archives and Records Service, Wash., DC.

Jul. 15, 1940—Mitchell, letter to Walter Smith, Tribal Member, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, Folder B (Fair and Pageant—935), National Archives and Records Service, Wash., DC.

Jul. 24, 1940—Joyce Kelly, letter to Gordon, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, Folder B (Fair and Pageant—935), National Archives and Records Service, Wash., DC.

Aug. 21, 1940—Ella Deloria, letter to C.B. Faris, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pageant—935, National Archives and Records Service, Wash., DC.

Oct. 22, 1940—Deloria, letter to George S. Mitchell, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, Folder B (Fair and Pageant—935), National Archives and Records Service, Wash., DC.

Nov. 29, 1940—Collier, letter to Deloria, John Collier Manuscript, Part II, Series I, Box 29, Folder 467, Sterling Library, Yale University, New Haven, Conn.

Dec. 11, 1940—Mitchell, letter to Deloria, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, Folder B (Fair and Pageant—935), National Archives and Records Service, Wash., DC.

Dec. 11, 1940—Mitchell, letter to Collier, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, Folder B (Fair and Pageant—935), National Archives and Records Service, Wash., DC.

Jan. 8, 1941—Deloria, letter to George S. Mitchell, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, Folder B (Fair and Pageant—935), Wash., DC.

May 5, 1941—Mitchell, letter to Howard H. Gordon, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, Folder N (Budget 1937–1940) 432, National Archives and Records Service, Wash., DC.

Jun. 19, 1941—Albert Maverick, Jr., Memorandum re Pembroke Farms, dated June 19, 1941, Farm Security Administration Project Records, NC, RG96 Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, Folder C (Property Operation and Disposition—900), National Archives and Records Service, Wash., DC.

Sep. 11, 1941—Pembroke State College for Indians, Education Conference: Pembroke, North Carolina, September 11–13, 1941, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, Folder A (General—000–900), National Archives and Records Service, Wash., DC.

Oct. 28, 1941—Deloria, letter to George S. Mitchell, Farm Security Administration Project Records, NC, RG96 Project AD–NC–22, Pembroke Farms, Pembroke, NC, National Archives and Records Service, Wash., DC.

Oct. 31, 1941—E.G., Howard H. Gordon, letter to George S. Mitchell, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, Folder B (Fair and Pageant—935), National Archives and Records Service, Wash., DC: "Indian in National Defense to be New Feature of Pembroke Pageant," Robesonian, Lumberton, NC, Oct. 29, 1941.

May 3, 1943—Cloyd Chavis, Chairman of Pembroke Farms Association, S.M. Bell, Siouan Council Chairman, James E. Chavis, Council Secretary and S.S. Lowrie, Council General, letter to Honorable Josiah W. Bailey, Farm Security Administration Project Records, NC, RG96, Project AD–NC–22, Pembroke Farms, Pembroke, NC, Box 437, Entry 7, Folder C (Property Operation and

Disposition—900), National Archives and Records Service, Wash., DC.

At the conclusion of World War II, the Agriculture Department adopted the policy of disposing of surplus property holdings to returning veterans, to ease their reintegration into the American economy. As part of this policy, the Department identified the NYA community center, part of the Pembroke Indian Farm Projects, at Red Banks as surplus property and scheduled its sale for public auction. The Lumbee immediately protested, and enlisted the aid of Collier to prevent the sale. The aid was forthcoming, but too late. Assistant Commissioner William Zimmerman visited Robeson County and met with the Indian leadership. Finally, a group of the Lumbee pooled their resources and repurchased the center from the white man who bought it at the auction. The Pembroke Farms tenants were somewhat successful in attaining ownership status and paying off their long-term mortgages. The Red Banks Mutual Association was the longest lasting of all government-sponsored farm cooperatives in the nation. Whereas most cooperatives were disbanded by the early 1950's, RBMA lasted until 1968, despite heavy pressure to terminate its lease in the post-war period. "U.S. Stakes Lumbee to New Future: New Deal Era Co-op Dissolved," News and Observer, Raleigh, NC, Sun., July 7, 1968.

Outside the efforts of the Lumbee to organize under the Wheeler-Howard Act and the federal involvement in Pembroke Farms, the next official notice of the Lumbee tribe by Congress came in 1944. In testimony before a subcommittee of the House Committee on Indian Affairs, which was investigating the federal government's relation with Indian tribes, D'Arcy McNickle used the Census Bureau's enumeration of Indians in North Carolina as an example of the problematic definition of Indians. McNickle testified:

> The Census Bureau usually reports a different criterion of who is an Indian. It counts, for example, some 14,000 persons as Indians in the State of North Carolina simply because they claim to be Indians and are living in the community as Indians. In fact, the State of North Carolina has designated that group to be Indians, whereas the Indian office does not so designate them (US House Hearings, December 4–8 & 13, 1944, Subcommittee of Committee on Indian Affairs, US House of Representatives, P. 264.)

Dec. 4, 1945—US House of Representatives Subcommittee of Committee on Indian Affairs, 78th Congress, 2d Session, Hearings Pursuant to House Resolution 166, Dec. 4–8 and 13, 1944 (part 4 Wash., DC: US Government Printing Office 1945), 264 and 282. A Bill to authorize, direct and conduct investigation to determine whether the changed status of the Indian requires a revision of the laws and regulations affecting the American Indian.

In 1953 the State of North Carolina changed the name of the Lumbee Tribe from Cherokee Indians of Robeson County to Lumbee (1953 N.C. Pub. Laws, Ch. 874). In July 1955 a bill was introduced by Congressman Carlyle to recognize the Lumbee.

Jul. 1955—H.R. 4656, [84th Congress], 1st Session Bill to recognize Lumbee Indians of NC, introduced by Congressman Carlyle; referred to Committee on Interior and Insular Affairs.

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Aug. 3, 1955—Letter from Orme Lewis, Assistant Secretary of the Interior, to Honorable Clair Engle, Chairman, Committee on Interior and Insular Affairs, US House of Representatives. Unfavorable report on H.R. 4656, the Lumbee bill, suggesting amendment "to indicate clearly that it does not make these persons eligible for services provided through the Bureau of Indian Affairs to other Indians"; reprinted in H.R. Report Number 1654, 84th Congress, 2d Session (Jan. 18, 1956) US House Committee on Interior and Insular Affairs, "Relating to the Lumbee Indians on North Carolina", page 2.

Jan. 18, 1956—H.R. Report Number 1654, 84th Congress, 2d Session. Committee on Interior and Insular Affairs reporting favorably on H.R. 4656 without amendment (see 102 Congressional Record 849 (House, Jan 18, 1956); serial set Volume I, Number 11897.

Feb. 6, 1956—102 Congressional Record 2102 (House). Clerk called H.R. 4656; passed over without objection.

Feb. 20, 1956—102 Congressional Record 2900 (House). Remarks of Mr. Ford and Mr. Carlyle re H.R. 4656; bill ordered engrossed, read third time, and passed; motion to reconsider laid on the table.

Feb. 21, 1956—102 Congressional Record 2991 (Senate). H.R. 4656 read twice by title.

May. 16, 1956—102 Congressional Record 8209 (Senate). Committee report on H.R. 4656 submitted (Senate Report Number 2012).

May. 16, 1956—Senate Report Number 2102, 84th Congress, 2d Session. U.S. Senate, Committee on Interior and Insular Affairs, Report (To accompany 4656): "Relating to the Lumbee Indians of North Carolina"; recommends passage of H.R. 4656 in amended form, with "termination language"; reprinted in 1956 US Code Cong. & Ad. News 2715; serial set Volume 3, Number 11888.

May 21, 1956—102 Congressional Record 8541 (Senate). Committee on Interior and Inuslar Affairs amendment to H.R. 4656 agreed to; bill as amended read third time and passed.

May. 22, 1956—102 Congressional Record 8760 (House). H.R. 4656 found truly enrolled bill of the House and signed by the Speaker.

May. 23, 1956—102 Congressional Record 8766 (Senate). H.R. 4656 found truly enrolled and signed by Speaker pro tempore, and signed by the Vice President.

May. 23, 1956—102 Congressional Record 8768 (Senate). Senate Concurrent Resolution 80, providing for the return of the Senate to H.R. 4656, submitted by Mr. Smathers, considered, and agreed to.

May. 23, 1956—102 Congressional Record 8820 (Senate). Remarks of Senator Smathers, re Senate Concurrent Resolution 80.

May 24, 1956—102 Congressional Record 8945 (House). Senate Concurrent Resolution 80 conveyed to the House for concurrence; House considered and agreed to Senate Concurrent Resolution 80; motion to reconsider tabled.

May 24, 1956—102 Congressional Record 8963–64 (House). Message from Senate that Senate has passed H.R. 4656, with an amendment, and House concurrence is requested; also, House considered the Senate amendment and concurred, with a motion to reconsider tabled (pages 8963–64).

May 28, 1956—102 Congressional Record 9089 (Senate).

May 28, 1956—102 Congressional Record 91224 (House). H.R. 4656 found truly enrolled, and signed by Speaker pro tempore.

May 29, 1956—102 Congressional Record 9273 (House). H.R. 4656 presented to the President for approval on May 28, 1956.

June. 7 , 1956—An Act Relating to the Lumbee Indians of North Carolina, Act of June 7, 1956, Public Laws Number 84–470, Chapter 375, 70 Statute 254–55. Lumbee Act.

Jun. 14, 1956—102 Congressional Record 10413 (House). Message from the President of approval, on June 7, 1956, of H.R. 4656.

The final sentence of Section 1 of the Lumbee Act provided that "Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians shall be applicable to the Lumbee Indians." This Act provided the Lumbee with a federally recognized name as a tribe but did not entitle them to any services provided by the Bureau of Indian Affairs, Department of Interior. Further, it raised a question in the minds of the 22 Lumbees and their descendants who had qualified in 1938 for eligibility under the Wheeler-Howard Act.

The next major battle for the Lumbee on the national level was to save their schools from integration. By the late 1960's integration had become a reality in the South. Because of the unique ethnic, political, and legal status of the Lumbee schools the tribe held onto its collective hope that the Indian schools could be preserved. The tribe viewed desegregation as, properly, a matter between whites and blacks. The Lumbee parents of Prospect High School students filed suit in the United States District Court for the Eastern District of North Carolina, seeking to enjoin the Robeson County Board of Education from including the Indian schools in its desegregation plan.

1970—Boston Locklear, et al v. Elliot Richardson, et al. "Prospect Suit," U.S. District Court, Eastern District of NC

The suit delayed integration until the next fall; even though no decision had been made on the merits of the Lumbee's claim the court had refused to issue a preliminary injunction. The next fall thirty-five Indian parents, impatient with justice delayed, blockaded the Prospect school. The situation became so tense the school was closed for several days. Seven parents were prosecuted and convicted for the disorder.

Sep. 22, 1971 "7 Convicted in Disorders" News and Observer, Raleigh, NC. In December a group of parents from Prospect formed the Eastern Carolina Indian Organization. Their stated purpose was to pursue federal recognition for the tribe in order that they could have a separate school system. Being disenchanted with the Lumbee leadership and the language of the Lumbee Bill they began calling themselves Tuscarora ("Are They Indians, Are They Lumbees?" News and Observer, Raleigh, NC, Jan. 9, 1972.)

The Eastern Carolina Indian Organization began to pursue the rights of the 22 recognized Indians of Robeson County. In the meantime the Honorable B. Everett Jordan sought to amend the Lumbee Bill.

Oct. 28, 1971—Remarks of the Honorable B. Everett Jordan on S. 2763, 117 Congressional Record (Senate, 92d Congress, 2d Session). Bill to Amend Lumbee Act.

Oct. 28 1971—S. 2763, 92d Congress, 2d Session. Bill introduced by Senator B. Everett Jordan to repeal undesirable language in 1956 Lumbee Act; failed to pass.

Nov. 29, 1971—US Department of the Interior, Bureau of Indian Affairs, letter from R.M. Pennington to Carnell Locklear, Secretary-Treasurer Eastern Carolina Indian Organization, Inc., taking notice of 22 recognized Indians of Robeson County after Locklear presented copy of Dec. 12, 1938 letter from Zimmerman to Brooks (Copy on file LRLS).

Dec. 8, 1971—Letter from Carnell Locklear and Hughie Locklear to Honorable Rogers C.B. Morton, Secretary, US Department of the Interior, transmitting a petition for organization under the Indian Reorganization Act (Hatteras Tuscarora file, Bureau of Indian Affairs).

Apr. 3, 1972—US Department of the Interior, Bureau of Indian Affairs, John Crow, Deputy Commissioner, letter to Honorable Glen M. Anderson, US House of Representatives, denying services to Lumbee Mrs. Christine Locklear Deeb based on 1956 Act, with reference to pendency of S. 2763 (Native American Rights Fund, Maynor v. Morton file).

When the BIA took the position that the Lumbee Bill also terminated the rights of the original 22 under the Wheeler-Howard Act the organization sought and obtained the legal assistance of the Native American Rights Fund (NARF) and Thomas R. Tureen of Pine Tree Legal Assistance, Inc.

Sep. 5, 1972—Thomas R. Tureen, Pine Tree Legal Assistance, Inc., letter to Louis R. Bruce, Commissioner of Indian Affairs, US Department of the Interior, re organization under Indian Reorganization Act of Robeson County 22 (Native American Rights Fund, Maynor v. Morton file).

Nov. 28, 1972—Memorandum from William A. Gershuny, Associate Solicitor, Indian Affairs, to Commissioner of Indian Affairs (Attention Leslie N. Gray); Re interpretation of 1956 Lumbee Act as it relates to rights of recognized 22 Robeson County Indians to organize as a tribe under the Indian Reorganization Act; written in response to memorandum by Thomas N. Tureen on behalf of Eastern Carolina Indian Organization, Inc.; concludes Act simultaneously recognized and terminated the Lumbee therefore, the 22 had no right to organize (Copy on file LRLS).

Jan. 10, 1973—US Department of the Interior, Charles G. Emley, Deputy Assistant Secretary, letter to Thomas R. Tureen, stating that 22 lost Indian Reorganization Act rights by enactment of 1956 Lumbee Act (Copy on file LRLS).

Feb. 21, 1973—Vestia Locklear and Lawrence Maynor v. Rogers C.B. Morton, Secretary, US Department of the Interior, Civil Action 337–73, filed in US District Court for the District of Columbia (John H. Pratt, Jr., presiding) (Native American Rights Fund Maynor v. Morton file).

May 4, 1973—Thomas R. Tureen letter to John Echohawk, Director, Native American Rights Fund, explaining Locklear v. Morton case (Native American Rights Fund, Maynor v. Morton file).

Jul. 19, 1973—Locklear v. Morton motion by Secretary of the Interior for summary judgment granted. (Native American Rights Fund, Maynor v. Morton file).

Aug. 2, 1973—U.S. Department of the Interior, Office of the Solicitor, David E. Lindgren, Deputy Solicitor, letter to Vestia Locklear Lowery re her July 23, 1973 telegram (Native American Rights Fund, Maynor v. Morton file).

Sep. 6, 1973—U.S. Department of the Interior, Bureau of Indian Affairs, Harry A. Rainbolt, Director, Southeastern Agencies, Memorandum to Assistant Secretary for Indian Affairs re "Tuscarora Indians of NC." (Hatteras Tuscarora file, Bureau of Indian Affairs).

Sep. 14, 1973—Locklear v. Morton notice of appeal to U.S. Circuit Court for the D.C. Circuit filed.

While the original 22's case was pending before the D.C. Circuit Court of Appeals the Lumbee again sought an amendment to the Lumbee Act.

1974—H.R. 12216, 93d Congress, 2d Session. Bill introduced by Representative Rose (NC) to amend the 1956 Lumbee Act to clarify that Lumbee are entitled to full status in parity with state recognized tribes; passed the House without objection; S. 159 in Senate, 94th Congress.

1974—S. 4045, 93d Congress, 2d Session. See remarks, 120 Congressional Record 32530 (Senate.)

Apr. 5, 1974—Letter from John Kyl, Assistant Secretary of the Interior, to Honorable James A. Haley, Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives. Recommending enactment of H.R. 12216 if amended as suggested (Hatteras Tuscarora file, Bureau of Indian Affairs).

During this time a question also had been raised as to the Lumbee's eligibility for funds under the Indian Education Act because of the language of the Lumbee Bill. On April 10, 1974 the Office of the General Counsel for Health, Education and Welfare held the Lumbee eligible.

Apr. 10, 1974—Memorandum from Education Division, Office of General Counsel, Health Education and Welfare, (Charles Cervantes, for Harry J. Chernock, Assistant General Counsel for Education to Fred Hundemer, Jr., Re: Lumbee eligibility for Indian Education Act grants (Copy on file LRLS).

Congressman Rose's Bill continued to proceed through Congress and the Original 22 pursued their claim thru the courts.

Oct. 1, 1974—H.R. Rep. No. 93–1394, 93d Congress, 2d Session. U.S. House, Committee on Interior and Insular Affairs, Report (to accompany H.R. 12216) "Amending the Act Relating to the Lumbee Indians of NC."

Nov. 21, 1974—Maynor v. Morton argued before the D.C. Court of Appeals.

Jan. 16, 1975—S. 159, 94th Cong., 1st Sess. Bill paralleling H.R. 12216; introduced by Senator Helms (NC); see remarks of Helms, 121 Congressional Record 531 (Senate, Jan. 16, 1975).

Apr. 3, 1975—Memorandum of Galen D. Powers, Assistant General Counsel, Human Resources Division, Health Education and Welfare, dated Apr. 3, 1975. Re: Lumbee eligibility for Economic Opportunity Act of 1964 grants under Title VIII, sec. 803(a) (Copy on file LRLS).

Apr. 4, 1975—Maynor v. Morton, 510 f.2d 1254 (D.C. Cir.). Favorable decision construing effect of 1956 Lumbee Act on Lumbee with 1/2 or more Indian blood. Decision clarified that the Lumbee Act did not terminate the rights of the Original 22 under the Indian Reorganization Act.

After the Maynor v. Morton decision the tribal members of the Original 22 who were still living began to organize under the Indian Reorganization Act. There were 8 of these known as "the survivors."

August 21, 1975—U.S. Department of the Interior, Bureau of Indian Affairs, Office of Trust Responsibilities, John Gordon, Research Specialist, Memorandum to Area Director, Eastern Area Office, re: "Lands—Hatteras Tuscaroras of NC." (Hatteras Tuscarora file, Bureau of Indian Affairs).

Sep. 26, 1975—U.S. Department of the Interior, Bureau of Indian Affairs, Eastern Area Office, Harry A. Rainbolt, Director, Memorandum to the Commissioner of Indian Affairs, re: "Hatteras Tuscarora Indians of NC," including a presentation in Indian Reorganization Act rights after Maynor v. Morton (Hatteras Tuscarora file, Bureau of Indian Affairs).

Simultaneously with the original 22 suit, the Lumbee leadership began its two-year long effort to "break double voting." Double voting was the system in Robeson County by which white majorities in the major towns operated with the white minority in the predominantly Indian county area to maintain white control over the county school system. The county had six school systems—five town systems and a predominantly Indian county system. Double voting allowed residents of the town administrative units to vote for town school board officials, and to vote for county school board officials; county residents could vote only for county school board officials.

Janie Maynor v. NC State Board of Elections 379 F. Supp. 2 (E.D. NC 1974). Janie Maynor v. NC State Board of Elections, 514 F.2d 1152 (4th Circuit Sept. 26, 1975). Decision reversed the district court and ordered a halt to voting by town residents in county school elections.

The Lumbee tribe was also very interested and involved with the American Indian Policy Review Commission.

1976—US Senate, Select Committee on Indian Affairs, American Indian Policy Review Commission, Task Force Five: Indian Education, Final Report (Wash., DC: United States Government Printing Office, 1976). Pages 197–231: "Special Report on Non-Federally Recognized Indians"; pages 219–23: North Carolina Haliwa, Coharie, Waccamaw Siouan, and Lumbee.

Sept. 1976—US Senate, Select Committee on Indian Affairs, American Indian Policy Review Commission, Task Force No. 9: Law Consolidation, Revision, and Codification Final Report (Wash., DC: United States Government Printing Office, 2 Vols., Sept. 1976). Vol. I, pages 44–45: "Recognition of Unrecognized Tribes," discussing Lumbee right to organize tribe under Indian Reorganization Act, citing Felix Cohen's 1935 memorandum on "Siouan Indians of NC," Morton v. Maynor decision, and Indian Office response to 1890 petition for educational assistance.

Oct. 1976—American Indian Policy Review Commission, Task Force Ten, Final Report: Terminated and Nonfederally Recognized Indians.

The eligibility of the Lumbee to receive services was again challenged in 1976. The United Southeastern Tribes (USET) questioned the eligibility of the Lumbee to receive Office of Native American program (ONAP) and CETA funding. The Comptroller General of the United States ruled in favor of the Lumbee.

Nov. 2, 1976—In re United Southeastern Tribes, Inc., Decision of the US Comptroller General No. B–185659, Nov. 2, 1976. Denying protest filed against refusal of HEW to fund USET for ONAP because USET refused to assist Lumbee.

A similar claim would be raised a year later on the eligibility of the Lumbee under Title VIII, Head Start, Economic Opportunity and Community Partnership Act of 1974.

Aug. 5, 1988—Letter from Health Education and Welfare to Lumbee Regional Development Association. Re: Lumbee eligibility under Title VIII, Head Start, Economic Opportunity and Community Partnership Act of 1974 (ONAP, 42 USC Subsection 2991 et seq.); relies on Apr. 3, 1975, HEW opinion (Copy on file LRLS).

Aug. 1, 1979—In re Lumbee Indians of NC, 58 Comptroller General 699 (Decisions of the US Comptroller General, No. B–185659). Issue: Whether the Lumbee, as either nonfederally recognized or terminated tribe, is eligible for funding under Title VIII of the Head Start, Economic Opportunity and Community Partnership Act of 1974, 42 USC Section 270 (the Native American Programs Act of 1974, 42 USC Section 2991 et seq.) or other federal legislation for which eligibility depends on Indian status; result: yes, following interpretation of Lumbee Act in Maynor v. Morton.

The original 22 were not having as much success in getting a tribal constitution acceptable or land held in trust by the Bureau of Indian Affairs.

Mar. 31, 1977—Eastern Carolina Indiana Organization petition to Secretary US Department of the Interior, for land to be taken in trust and for tribal organization (Native American Rights Fund, Maynor v. Morton file).

Apr. 19, 1978—Bruce T. Cunningham, Jr., Seawell Pollock Fullenwider Robbins and May, P.A., letter to Scott Keep, Assistant Solicitor, Office of the Solicitor, US Department of the Interior, re Eastern Carolina Indian Organization conveying land in trust for 22 individuals (Copy on file LRLS).

Jul. 19, 1979—Arlinda Locklear, (NARF), letter to Ella Ackerman, Henry Brooks, Vestia Lowry, Lawrence Maynor, Anna Spencer, and Bruce Cunningham, relaying delay and request for further documentation by Kahlman R. Fallon in Atlanta on trust land decision (Copy on file LRLS).

Aug. 20, 1979—Arlinda Locklear, NARF, letter to Ella Ackerman, Henry Brooks, Rosetta Locklear, Vestia Lowry, Lawrence Maynor, Anna Spencer, and Bruce Cunningham, transmitting second draft of tribal constitution as "agreed upon at the last meeting." (Copy on file LRLS).

Sep. 11, 1979—US Department of the Interior, Office of the Solicitor, Atlanta Regional Office, John J. Scott, Assistant Regional Solicitor, letter to Bruce T. Cunningham, Jr., re "Eastern Carolina In-

dian Organization, Inc.—Title Opinion, requesting further documentation re title (Copy on file LRLS).

Sep. 14, 1979—Bruce T. Cunningham, Jr., letter to John J. Scott, Assistant Regional Solicitor, Atlanta Regional Office, Office, of the Solicitor, US Department of the Interior, re further title information for trust land (Copy on file LRLS).

Oct. 25, 1979—Arlinda Locklear, NARF, letter to John Gordon, Rights Protection Division, Bureau of Indian Affairs, US Department of the Interior, re problems of Rosetta Brooks with her Bureau of Indian Affairs-constructed house, copy to H. Rainbolt (Copy on file LRLS).

Nov. 19, 1979—Conversation between Bruce T. Cunningham, Jr., and Kahlman R. Fallon, Atlanta Regional Office, Office of the Solicitor, US Department of the Interior, re waiver of requirement that trust land title abstract include information on divestment of land by sovereign (letter Cunningham to Lawrence Maynor, Copy on file LRLS).

Feb. 4, 1980—Arlinda Locklear, NARF, and Bruce T. Cunningham, Jr., Meeting with Scott Keep, Assistant Solicitor, Office of the Solicitor US Department of the Interior, re temporary organization needed for Secretary to attempt trust land (letter Cunningham to Rainbolt Feb. 26, 1980, Copy on file LRLS).

Feb. 26, 1980—Bruce T. Cunningham, Jr., letter to Harry Rainbolt, Eastern Area Coordinator, Bureau of Indian Affairs, US Department of the Interior, re Feb. 4 meeting and enclosing Ackerman's alternative membership provision (Copy on file LRLS).

Jun. 11, 1980—Lawrence Maynor letter to Scott Keep, Assistant Solicitor, Office of the Solicitor, US Department of the Interior, complaining of changes in position and demanding action on trust land and constitution (Copy on file LRLS).

Jun. 12, 1980—US Department of the Interior, Office of the Solicitor, Clyde O. Martz, Solicitor, letter to Arlinda Locklear, NARF, and Bruce T. Cunningham, responding to May 22 letter, saying decision on trust land will be made first and then Interior and 22 will address type of organization to form, which probably should not be an organization with sovereign powers but powers as held by property owners (Copy on file LRLS).

Oct. 9, 1980—Arlinda Locklear, NARF, letter to Ella R. Ackerman, Henry Brooks, Rosetta Brooks, Vestia Locklear, Lawrence Maynor, Anna Spencer, and Bruce T. Cunningham, re telephone conversation last week in which Sam Deloria, Special Assistant to Assistant Secretary Tom Fredericks, said the Assistant Secretary had decided to deny trust land request by East Carolina Indian Organization, and agreed to meet at Community Center October 21 (Copy on file LRLS).

Oct. 17, 1980—Arlinda Locklear, NARF, and Bruce T. Cunningham, letter to Sam Deloria, Special Assistant to the Assistant Secretary, Indian Affairs, US Department of the Interior, re October 12 abrupt cancellation by Deloria of October 21 meeting, and the imminency of suit (Copy on file LRLS).

Oct. 22, 1980—Rep. Charlie Rose (NC), US House of Representatives, letter of Thomas W. Fredericks, Assistant Secretary, Indian Affairs, US Department of the Interior, requesting that Assistant Secretary meet with half-bloods and NARF (Copy on file LRLS).

Nov. 5, 1980—US Department of the Interior, Office of the Secretary, Philip S. Deloria, Deputy Assistant Secretary, Indian Affairs, letter to Arlinda Locklear, NARF, and Bruce Cunningham, conveying final written decision of Secretary not to take land in trust for seven Robeson County half-bloods (Copy on file LRLS).

HISTORICAL NARRATIVE

Introduction

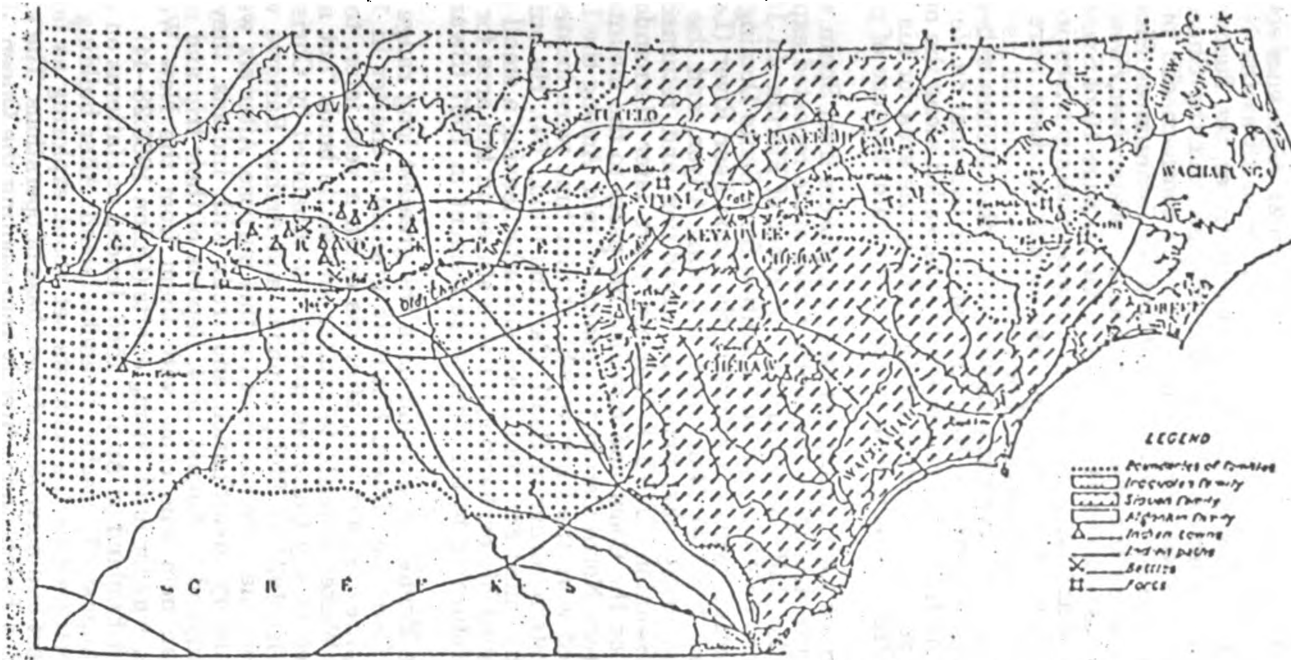
Because of the complexity of the petitioner's history it is best that we summarize the principal points we intend to make in this petition. This approach is necessary because of features unique to the Southeast, and in particular, North Carolina. These points are presented below:

1. North Carolina was a border area between Spanish and English exploration.
2. English settlement did not proceed gradually in an east to west movement, but rather, moved southward along the coast, southwesterly above the fall line, and north from Charleston, South Carolina, and north from Wilmington, North Carolina, along the Cape Fear River.
3. Indian communities between the coastal plain and near the fall line were affected before sufficient contact had been made to permit knowledge of their languages, and social and political organizations.
4. Between 1550 and 1750 there was considerable movement of Indian villages, merging and dividing, coalescing into historically identified groups.
5. In this context the traditional definitions and concepts of tribe have little applicable meaning. Thus names like Cheraw, Catawba, Waccamaw, Peedee, and a host of others, do not necessarily represent socio-political units beyond the village at the time of exploration.
6. The ease with which groups recombined indicates a continuity of social and political patterns that make labels of minimal value.
7. Groups were autonomous before they were named: the socio-political groups were kin-based towns.
8. Although the ancestors of the present-day Lumbee were pervasively affected by these factors, the data show that the present-day Lumbee population derives from diverse origins, the core of which is Cheraw. They were primarily of Siouan origins with, in all likelihood, additions from other linguistic stocks.
9. The Lumbee tribe has maintained a continuous social and political existence in Robeson County since at least the early part of the eighteenth century. The Lumbees are, and have always been, a clearly bounded, distinctive community with its own political leadership.
10. The Lumbees have a long and continuous history and identification as Indians by the federal government, the state of North Carolina, the county, historians and anthropologists, public media and other American Indians.

Map 1

World Book Encyclopedia 1976

MAP 2



INDIAN TRIBES OF CAROLINA ABOUT 1700

(Lefler and Newsome 1954: 25)

European contact

At the time of contact between the native populations and European explorers, there were three linguistic stocks represented in what is now the state of North Carolina (Map 2). Algonkian-speaking tribes extended along the coastline as far south as the Neuse River. Inland from them were the Iroquoian tribes, the Tuscarora, Nottoway, and Meherrin, east of the fall line, and the Cherokee along the ridge of the Appalachians. At the southern end of the state was a number of groups identified by Swanton as Siouan-speaking including the Waccamaw, Cheraw, Cape Fear, Winyaw, Catawba, to name but a few (See table facing page 10 of Swanton 1946). There was also a number of Siouan-speaking tribes in the southern Virginia area. Most prominent among these were the Saponi, Tutelo, and Ocaneechi (Ibid.).

The first known European contact with the Indian tribes in North Carolina occurred in 1524. In that year Giovanni da Verrazzano, acting on behalf of Francis I of France, sailed along the outer Banks of Cape Hatteras, thus laying claim to the area for his sovereign. But France was unable to exploit its claim because of problems at home.

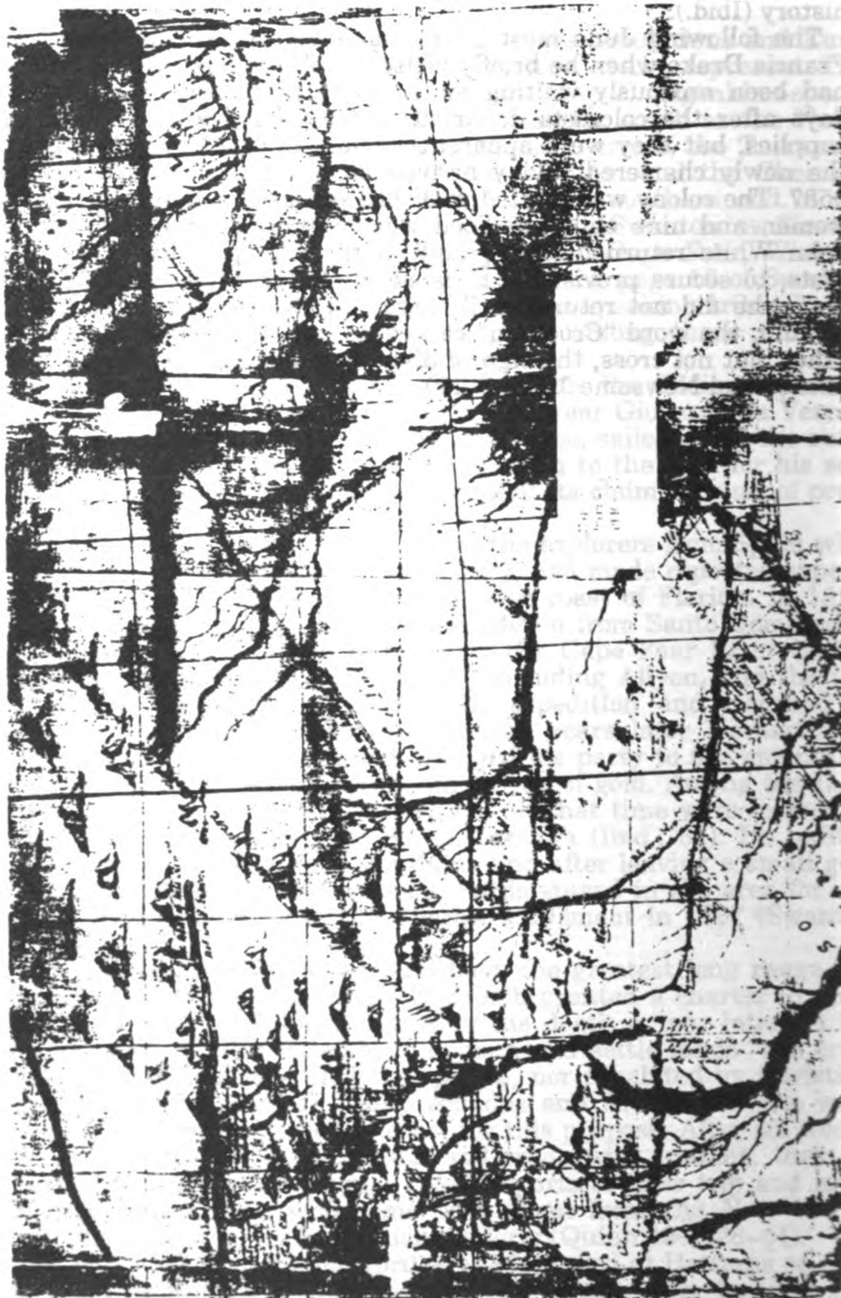
There were no such limitations on the explorers from Spain who, for the first two decades of the century, had made repeated expeditions along the Gulf Ceast and the east coast of Florida. In 1526, Lucas Vasques de Allyon led an expedition from Santo Domingo to the River Jordan, which is probably the Cape Fear River (Lefler and Newsome 1954: 4). Many died, including Allyon, and the few members remaining abandoned the expedition and returned to Hispanola (Swanton 1946:37). Thirteen years later Hernando de Soto landed on the Coast and marched his party to the mountains of southwestern North Carolina in search of gold. Among the Indians he visited were the Cheraw, who at that time were located in the northwestern corner of South Carolina (Ibid.: 64). He built a fort, which he called Fort San Juan, and after leaving a small garrison, continued his explorations. Pardo stayed in the area for another year, returning to the Cheraw settlement in 1567 (Swanton 1946: 65).

It was the English who would have the greatest long range impact on the Carolinas. Queen Elizabeth granted a charter in 1583 to Sir Humphrey Gilbert and, after his death a year later, to his half-brother Walter Raleigh, to explore and settle lands "not actually possessed of any Christian prince, nor inhabited by Christian people." (Lefler 1934:3). Philip Amadas and Arthur Barlowe were sent to explore the Carolina coast for this purpose. After six weeks of natural history investigation and trade with Indians, they returned to England in August 1584. Reports of their trip and news of two Indian men who came with them from the New World, smoothed the way for fund-raising efforts (Quinn 1985:28–44).

A party left England on April 9, 1585, landed at Hatteras on July 27, and by August 17, reached Roanoke Island. After building cottages and fortifications the colonists set about exploring as far as 130 miles west and northwest of their base of operations. The expedition included Ralph Lane, directly representing the Queen, John White, a skilled artist, and Thomas Hariot, an Oxford don and noted scientist. White's paintings and Hariot's written accounts

provide excellent information about the region's people and natural history (Ibid.).

The following June most of the party left for England with Sir Francis Drake when he briefly visited Roanoke Island. The settlers had been anxiously waiting for supplies that arrived only a few days after the colonists departed. A few men were left with the supplies, but they were apparently killed by the time members of the newly chartered colony arrived on the Outer Banks in July, 1587. The colony was started with 110 settlers, including seventeen women and nine children. Food was in short supply so Governor John White returned to England, at the urging of the other colonists, to secure provisions. Because of the activity of the Spanish Navy, he did not return until August, 1590. He found the houses in ruin, the word "Croatoan" carved on one tree, and "Cro" on another, but not cross, the sign of distress, as previously agreed upon (Lefler and Newsome 1954: 5–12).



In the face of such difficulties English efforts to colonize North America were halted, not to be renewed until 1606. In that year James I granted a charter to the Virginia Company, and the following year Jamestown was established on Chesapeake Bay. Beginning with Sir Robert Heath in October, 1629, a series of proprietary land grants were issued as a means of stimulating the colonization of the areas adjacent to the Jamestown settlement. The next two decades saw repeated efforts to explore the Albemarle area and push back the occupying Indians by force, or negotiate land agreements with them (McPherson 1966).

By the middle of the seventeenth century England was embroiled in a civil war from which Oliver Cromwell emerged victorious. Charles I was beheaded in 1649, and Cromwell ruled until his death in 1658. Two years later Charles II claimed the crown after more than a decade in exile. Shortly after his return he granted a tract of land that extended from the southern shore of Albermarle Sound to what is what is now the Georgia-Florida state line, bounded on the east and west by the sea, to eight of his supporters. In 1665 the grant was expanded to include the area below the current Virginia-North Carolina boundary as far south as the Spanish territory in Florida (Lefler and Newsome 1954: 33). Between 1662 and 1667 the proprietors made a number of attempts to establish a permanent settlement on the Cape Fear River in Clarendon. As many as 800 men, women, and children lived there during this period. Convinced that the land was unproductive and the Indians hostile, and torn by internal dissension, they soon left. By contrast, Charleston, which was founded in 1670, quickly became the hub for the development of the colony of South Carolina.

Around the turn of the century, settlers began to establish communities along the seacoast. By 1690–91, French families had settled on the Pamlico River. Others came to the Neuse and Trent Rivers around 1707. The town of Bath was incorporated in 1706. In 1710 New Bern was founded by Christoph von Graffenried, and included over 200 Swiss and German colonists. This southern expansion of Euroamericans lined the sounds, inlets, and rivers with their permanent settlements (Map 3). These were not explorers who would be gone in a few weeks or months, but a growing wave of immigrants looking for new homes and a new way of life. As such, they posed a serious threat to the neighboring Indian communities.

The settlement of other parts of eastern Carolina was first delayed, and then made possible, by the devastating wars between Indians and whites from 1711 to 1716. These wars accelerated the depopulation of the Indian that had earlier taken place in the northern coastal area. By 1724 the lower Cape Fear River received its first permanent Anglo-American settlers. Most came from South Carolina. The town of Brunswick was established in 1725 to be replaced by Wilmington a decade later as the area's center for trade, culture, and government.

By the 1730s there were 30,000 whites, 6,000 blacks and an estimated 1,000 Indians in North Carolina (Merrens 1964: 20). Of this total population just over a thousand were in the Cape Fear area, while the others were located in the older, more established parts of the colony to the north and northeast. North Carolina lagged be-

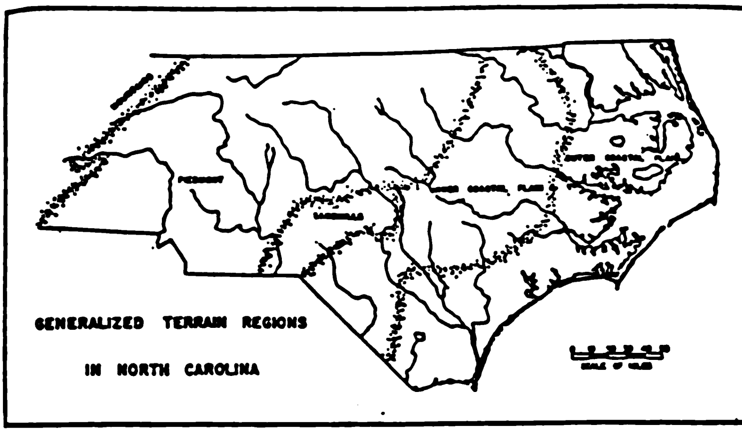
hind its neighbors in new population growth. Outside the tidewater area, the Euroamerican population was limited to occasional visits by men who were explorers, traders, and surveyers.

In general, the settlement of North Carolina was influenced by two geographical factors. First, the lack of good harbors diverted European immigration to the north (Virginia and Maryland) and to the south (South Carolina). The coastal area, consisting of a chain of islands or banks, was separated from the mainland by five sounds. These sounds, which represent the largest inland waters of any state, are shallow, as are the inlets, making navigation dangerous. It is not without reason that the area has been named the "Graveyard of the Atlantic." The principal rivers of North Carolina—the Tar, Neuse, and Cape Fear—flow into this inland basin (see map 1 and map 3).

Second, the rivers which offered access to deep-water ports flowed into neighboring South Carolina. These rivers are the Yadkin, Catawba, Pee Dee, Broad, and Saluda. Thus, those who settled above the fall line found no easy access by water to the markets (Ibid.: 19; see map 1). The movement of people and goods was along a northwest-southeast axis, and settlement was limited to areas near the overland routes.

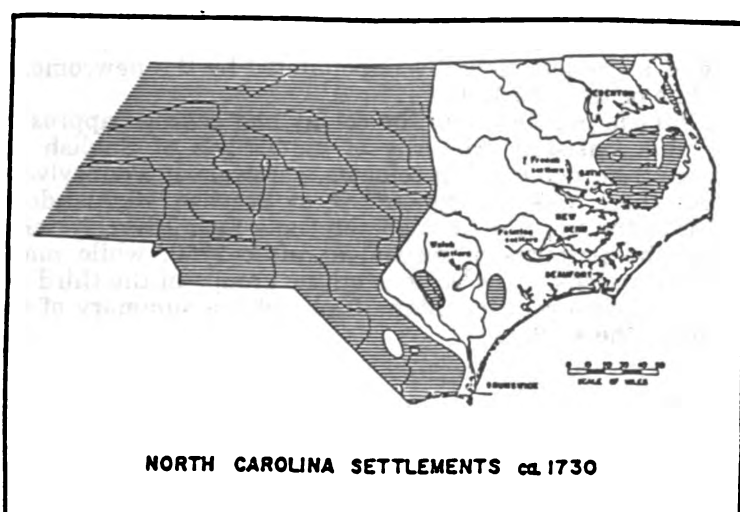
Until the 1730s Euroamerican settlement of the Carolinas spread from two centers: the Albemarle region of North Carolina and Charleston, South Carolina. The development of the Albemarle settlements was hindered by a lack of good ports and the policies of the proprietors, who restricted the right of land ownership, and were, in general, corrupt and oppressive. By contrast, Charleston had a good harbor, and a more pleasant year-round climate.

MAP 4



(Merrens 1964: 37)

MAP 5



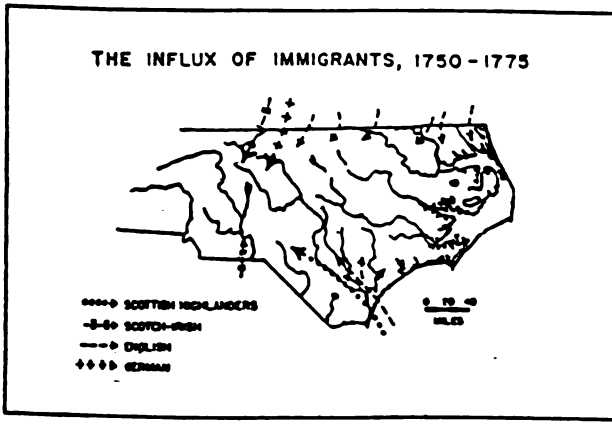
(Merrens 1964: 23)

By the early 1730s families had begun moving into the back country, although for several decades a sexual imbalance existed. There were on the average three Euroamerican men for every woman (Bridenbaugh 1952: 172). Those who moved into the back country (the western piedmont and mountain regions) were a mixture of children or grandchildren of old country immigrants and some recent arrivals. They were generally non-English in nationality and typically anti-English in sentiment. Most were Scotch-Irish, Presbyterian dissenters, or persecuted German Protestant (e.g., Moravians) groups. The majority traveled down the great valley of Virginia from earlier settlements in Pennsylvania looking for a new frontier, freedom and prosperity. Others moved into the backcountry north from Charleston along the drainages of the Wateree, Yadkin, and Catawba rivers. During this same period thousands of Highland Scots landed on the Cape Fear River and moved inland to the vicinity of what was to become Cross Creek (now Fayetteville). Map 5 shows the pattern of early eighteenth century settlement.

Several points should be made about the way North Carolina was populated during this period. First, in spite of early attempts to colonize the area, North Carolina lagged behind her neighbors in Euroamerican population growth and thus, was available as a convenient frontier for later expansion. Second, those who came to North Carolina in the eighteenth century were an ethnically diverse population. This diversity in language and culture prevented the development of a cohesive social structure. These ethnic communities, which included the Scotch-Irish, Germans, Welch, Swiss and French Huguenots (Ibid.: 21), found themselves isolated from each other, their principal, if not only point of contact being in commerce. Third, movement into the region along old, well established transportation routes (e.g. the Great Valley of Virginia, and various drainages from Virginia, South Carolina, and the coastal mouths of North Carolina rivers) and the swamps of the coastal plain resulted in several areas left virtually unpopulated by the newcomers until the middle or the late 1700s.

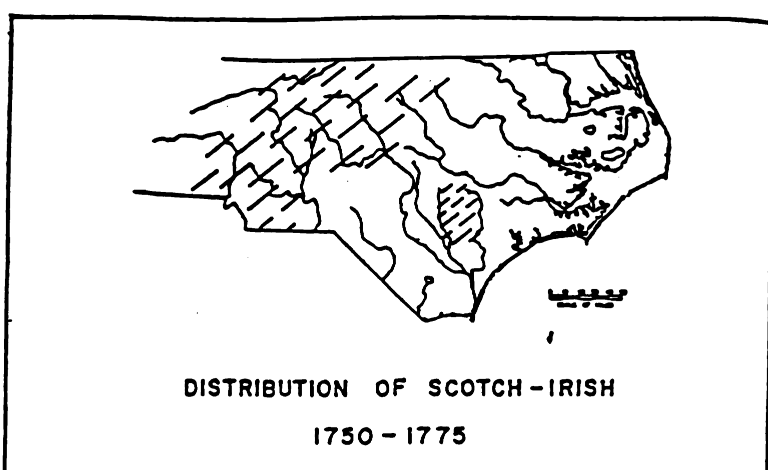
By 1750 the population of the colony had reached approximately 75,000 and consisted primarily of individuals of English descent who came from neighboring colonies, particularly Pennsylvania. In addition, there was a large influx of Scottish Highlanders who moved into the interior through the Cape Fear River system. Map 6 shows the patterns of movement after 1750, while maps 7–9 show the locations of the various ethnic groups in the third quarter of the eighteenth century. Map 10 provides a summary of the distribution of the settlers.

MAP 6



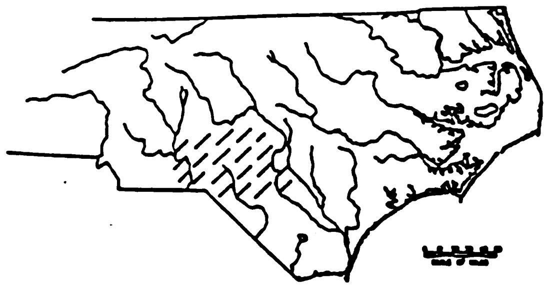
(Merrens 1964: 66)

MAP 7



(Merrens 1964: 56)

MAP 8

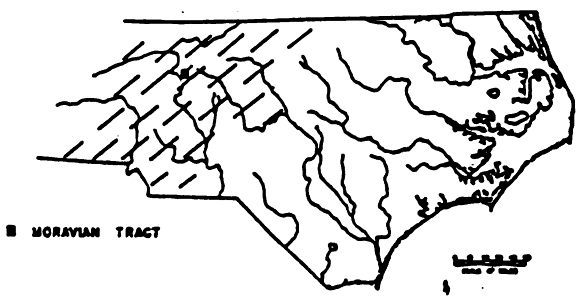


DISTRIBUTION OF SCOTTISH HIGHLANDERS

1750 - 1775

(Merrens 1964: 58)

MAP 9

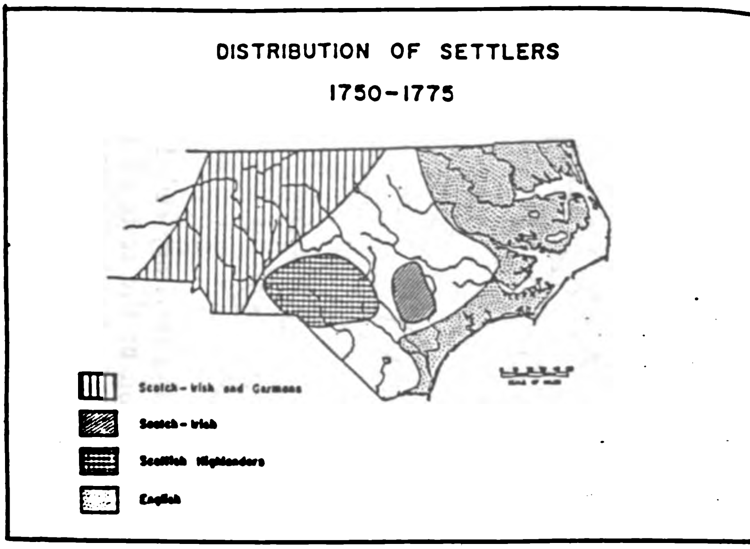


DISTRIBUTION OF GERMANS

1750-1775.

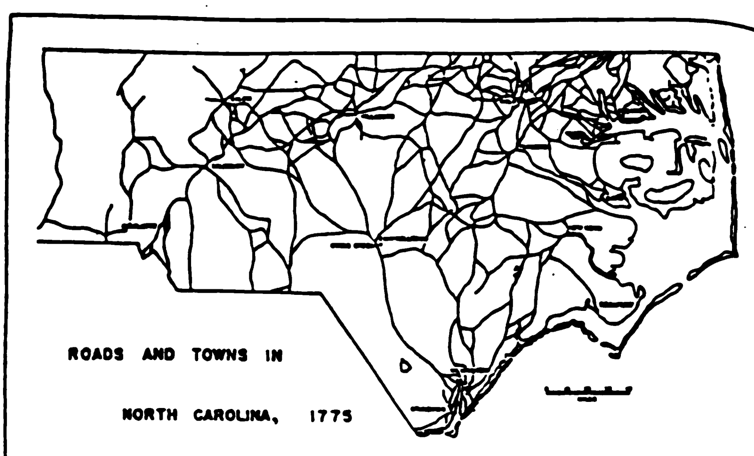
(Merrens 1964: 60)

MAP 10



(Merrens 1964: 68)

MAP 11



(Merrens 1964: 144)

MAP 12

NORTH CAROLINA IN 1783 (not including the territory ceded to the United States and later admitted to the Union as the state of Tennessee), SHOWING COUNTIES, ROADS, AND TOWNS

(Lefler and Newcome 1954: 253)

It is clear that none of these groups occupied the area in which the ancestors of the present-day Lumbee lived, although the Scottish Highlanders were in the vicinity. The remoteness of the area is further illustrated by Map 11–12; there was not a single road that traversed the Drowning Creek area in 1775, and the nearest town was Cross Creek (now Fayetteville), some forty miles distant. Geographical factors contributed to the lack of settlement in the area of Drowning Creek. But just as important was the fact that the area was occupied by an Indian group willing to contest for the land when European settlers arrived. Given the availability of cheap and better land elsewhere in North Carolina, it is not surprising that few whites sought land in the Drowning Creek drainage area.

Indians of Southern North Carolina 1500–1775

The area occupied by the present-day Lumbee Indians was home to a number of autonomous groups during the sixteenth through the eighteenth centuries. The Cape Fear Indians occupied the coastal area to the east, along the Cape Fear River. According to Swanton (1946; 103), this group may have been part of the Waccamaw tribe, who, in 1670, "* * * were living along the river which bears their name and on the lower course of the Pee Dee, in close association with the Winyaw and Pedee tribes" (Ibid.: 203). Some joined the Catawba, others "the so-called Croatan Indians of North Carolina, " while others remained in their traditional territory (Swanton 1952: 101). The Winyaw were also located on the Pee Dee River near its mouth (Ibid.: 1946: 207), and many of them also jointed the Catawba in the eighteenth century, while some remained in the vicinity of the white settlements, at least up through the 1750s (Ibid. 1952: 97).

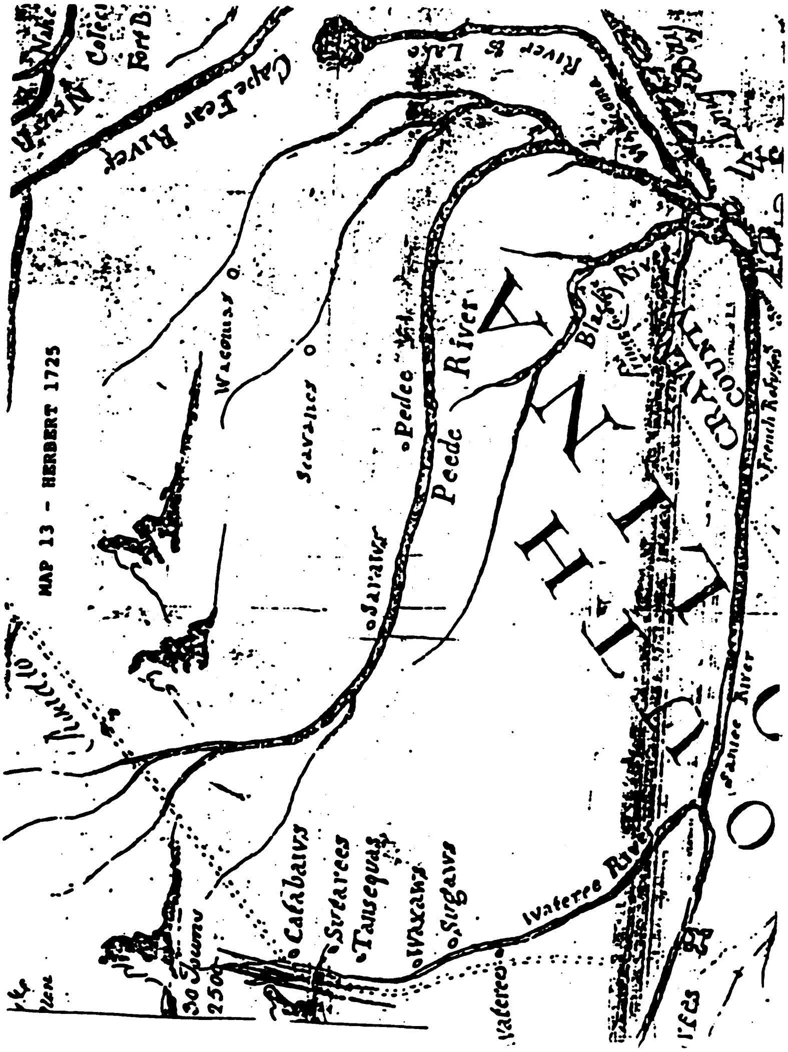
While English settlement did not reach the area until the latter part of the seventeenth century, there were Spanish contacts from the early part of the sixteenth century which profoundly influenced these tribes, particularly the Cheraw:

> Mooney (1928) has shown that the Cheraw are identical with the Xuala province which De Soto entered in 1540, remaining about 4 days. They were visited by Pardo at a later date, and almost a hundred years afterward Lederer heard of them in the same region. Before 1700 they left their old country and moved to the Dan River near the southern line of Virginia, where they seem to have had two distinct settlements about 30 miles apart. About the year 1710, on account of constant Iroquois attacks, they moved southeast and joined the Keyauwee. The colonists of North Carolina, being dissatisfied at the proximity of these and other tribes, Governor Eden declared war against the Cheraw, and applied to Virginia for assistance. This governor Spotswood refused, as he believed the Carolinians were the aggressors, but the contest was prosecuted by the latter until after the Yamasee War. During this period complaint was made that the Cheraw were responsible for most of the depredations committed north of Santee River and they were accused of trying to draw the coast tribes into an alliance with them. It was asserted

> also that arms were being supplied them from Virginia. The Cheraw were then living upon the upper course of the Great Pee Dee, near the line between the two colonies and in the later Cheraw district of South Carolina. Being still subject to attack by the Iroquois, they finally—between 1726 and 1730—became incorporated with the Catawba, with whom at an earlier date they had been at enmity. In 1759 a party joined the English in their expedition against Fort Dusquense, but the last notice of them is in 1768 when the remnant was still living with the Catawba (Swanton 1952: 76).

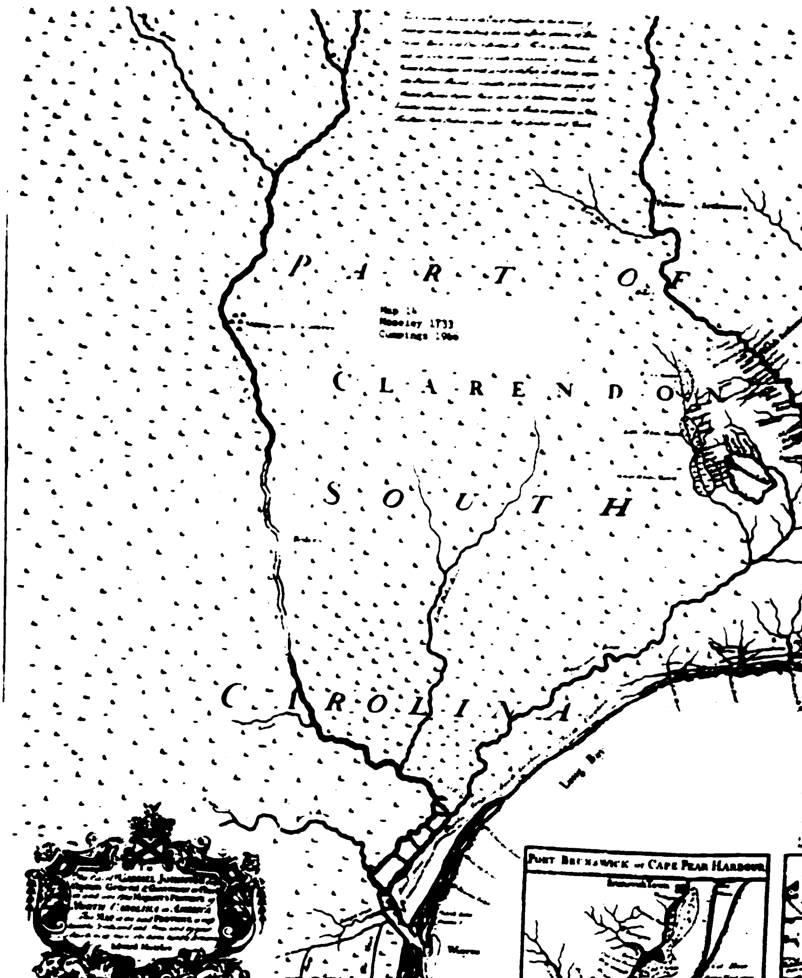
Swanton placed the Cheraw population at 510 in 1715, and between fifty and sixty in 1768 (Ibid.: 77). They were presumably living with the Catawba. These statements, while accurate as far as they go, not presume that all Cheraw joined the Catawba. What Swanton is saying is that sometime between 1726 and 1739 a number of Cheraw joined with the Catawba, but maintained a separate identity. It is possible that this was a single village, but there is no evidence that it was the only Cheraw village.

The earliest documentary evidence of Indian communities in the area of Drowning Creek is a map prepared by John Herbert in 1725. Herbert was the commissioner of Indian trade for the Wineau Factory on the Black River, which was the closest European outpost to Drowning Creek. This position allowed him to have an intimate knowledge of the location of the tribes in the area. The area between the Pee Dee River and Drowning Creek, a region beyond the control of either North Carolina or South Carolina, contained a number of Siouan-speaking communities. Herbert identifies four; the Saraws, Pedee, Scavanos, and Wacomas, with the Catabaws, Surarees, Tausequas, and Sugaw located to the west on the Wateree River (Map 13). There is no evidence of white settlement in the region at this time.



MAP 13 - HERBERT 1725

South Carolina began settlement in the upper reaches of the Pee Dee River in 1736. In that year the colony authorized a group of Welsh and Pennsylvania settlers to establish a community. The new settlers moved further up the river than intended and located on land owned by the Peedee and Cheraw (Meriwether 1940: 92). In 1737, one John Thompson, acting as agent, purchased all the land belonging to the two tribes along the Pee Dee River, except for two old fields. The Welsh settlement was located some distance southwest of Drowning Creek.


PART OF
CLARENDON
SOUTH
CAROLINA
Long Bay
PORT BRUNSWICK or CAPE FEAR HARBOUR

Apparently the purchase did not result in the removal of the Indians from the Area or establish a clear title, for in 1739 the Welsh residents petitioned the South Carolina council for assistance:

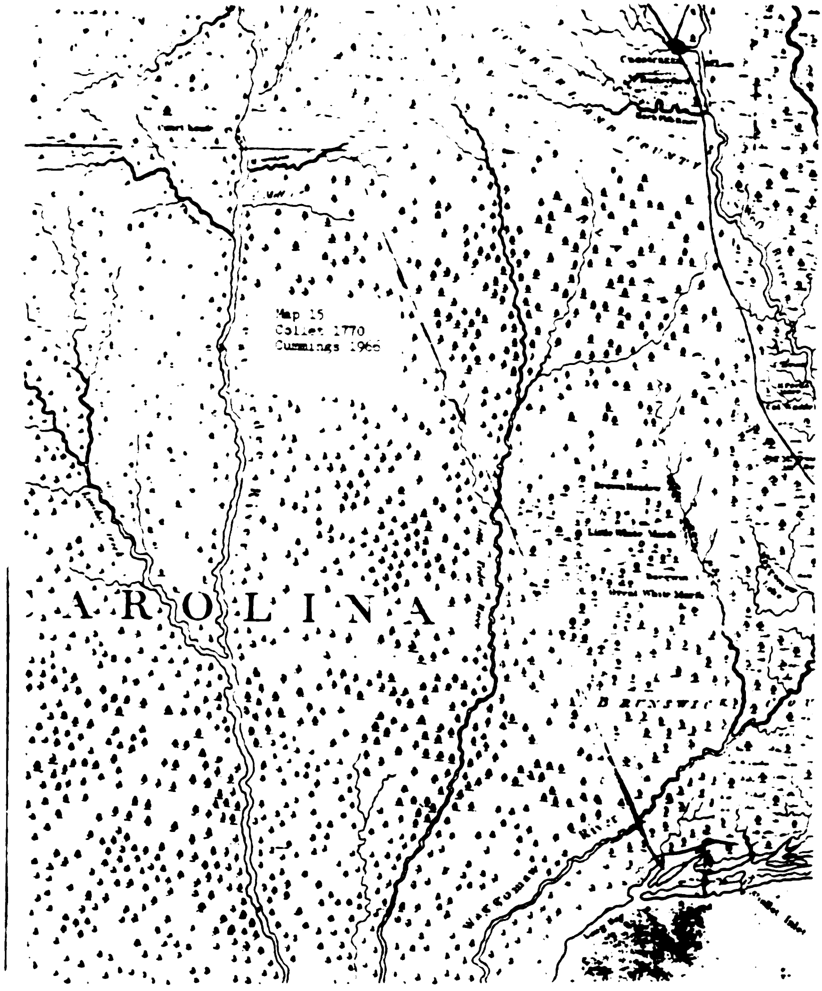
> Mr. John Thompson of Pee Dee attended to answer to the petition of the 16th March past from the Welsh people against him (setting forth the apprehensions they are under, from the Pee Dee and Charraw Indians running amongst their settlements under pretense of hunting; and several other complaints against the said Thomason; and so forth) (BPRO June 8, 1739).

On the fifteenth of June, Thompson appeared before the Council, and "* * * surrendered two conveyances from the Charraw Indians of their lands on Pee Dee River," one for the northeast side, and the other for the southwest side of the said river for the consideration of three hundred heavy buckskins. The instruments were signed by Robert, their chief, and fourteen of their head men, and dated the 4th day of August 1737 (Ibid. June 15, 1739). As to the two old fields reserved by the Cheraw, one was held by an individual named Laroche, and the other by Thomas Grooms (Ibid.).

The first land grant in the area of Drowning Creek was to Henry O'Berry in 1748 (NCSA October 8, 1748: 298). A second grant was made to John Davis in 1750. His land was located near the present community of Harper's Ferry, while a third grant was made to William Pugh in the same general area. However, there was already a settlement on Drowning Creek.

In 1754, Governor Arthur Dobbs of North Carolina, intending to assist Virginia's war against the Indians along her western frontier, issued a request for information on the condition of the militia in the various counties (Dial and Eliades 1975: 30). The report for Bladen County (which included what is now Robeson County) stated:

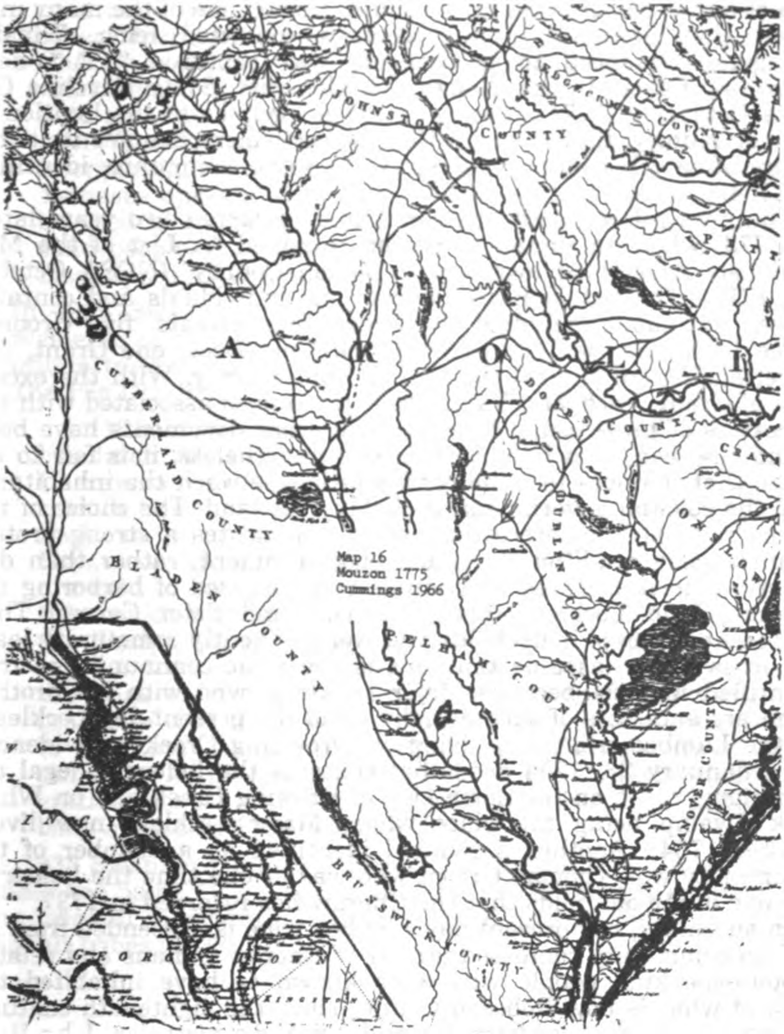
> Col. Rutherford's Regmt of Foot in Bladen County 441 a Troop of horse—a new company necessary to be made at Waggamaw James Kerr recommended for Capt.—Drowning Creek on the heard of Little Pedee 50 families a mix Crew [or breed] a lawless people filled the lands without patent or paying quit rents shot a Surveyor for coming to view vacant lands being enclosed by great swamps—Quakers to attend or pay as in the Northern Counties fines not high enough to oblige the militia to attend musters no arms stores or Indians in the county—(NCSA 1754: TR.1–16a)


Map 15
Collet 1770
Cummings 1966
AROLINA

It is clear that there was a community of 300 or more individuals on Drowning Creek that held land in common. The most reasonable explanation for its existence, given the lack of white settlement in the area, is that the community consists of resident tribal members. There is confirmation of the incident involving the surveyor and support for the contention that this was an Indian community existing on the frontier.

> *Proclamation*
>
> Whereas Information hath been made unto me, upon Oath that sundry Persons, under Colour and Pretence of Authority from his Majesty's Officers, in the Province of South Carolina, have come there into the County of Anson within this Province, and have there surveyed Lands by Virtue of the said Authority: And whereas, such illegal Proceedings tend manifestly to disturb the Peace, raise Doubts about the Property, and retard the Settlement of the said County of Anson, which is a Frontier to the Indians; I have though fit, by and with the unanimous Advice and Assent of his Majesty's Council, to Issue this my Proclamation, hereby strictly requiring and commanding his Majesty's Officers, civil and military, within the Province, who shall be informed of any Offence in the Premisses (sic), to apprehend or cause to be apprehended; every such offender, and to bring them, with due Proof of their Offence, before his Majesty's Chief Justice, or any one of his Associate Justices, to be dealt with according to Law. Herein they are not to fail.
>
> Given under my Hand and the Great Seal of the said Province, at Wilmington, the 10th Day of May, in the XXVI Year of his Majesty's Reign, Anno Domini 1753.—Matt Rowan.

The proclamation offers an explanation for the reference to there being no Indians in Bladen County. At this time Drowning Creek formed the boundary between Bladen and Anson Counties. Apparently the Indian community was on the Anson side of the river. The reference to the surveyor makes it clear that it is the same community referred to by Rutherford. Finally, there is the reference to Anson County being on the "Frontier to the Indians." The inescapable conclusion is that the community on Drowning Creek was an Indian community. Such an explanation is given strong support by a subsequent newspaper account.



Map 16
Mouzon 1775
Cummings 1966

The upper region of the Little Pee Dee River was outside the control of either North or South Carolina. During one of the many incidents that occurred in the area, a convicted felon, Winsler Driggers, sentenced to be hanged, was captured "* * * near Drowning Creek, in the Charraw Settlement" (South Carolina Gazette October 3, 1771). The reference is clear as to the location of the community; that it was a Cheraw settlement denotes its tribal composition. This is most certainly the same community identified in 1754.

The next reference to this community occurred two years later, in 1773, when an unnamed person compiled "A List of the Mob Railously Assembled together in Bladen County" (NCSA October 13, 1773). The list identifies twenty-one individuals and contains eleven surnames including two Iveys, four Sweats, five Grooms, three Locklears, one Chavours (Clark), one Dees, one Grant, one Pace, one Vaun, one Stapbleton, and one Carsey. With the exception of Grant, Pace, and Vaun, these are names associated with the ancestors of present-day Lumbees. No other documents have been found that can shed light on this list; nonetheless, it is fair to assume that it refers to some confrontation between the inhabitants and the colonial government, probably over land. The choice of the term "railously" is interesting, since it indicates a strong protest against some condition or action of government, rather than disorderly behavior. Three individuals were accused of harboring the others—Major Locklear, Recher Groom, and Ester Carsey. They represent heads of households and were evidently community leaders. It is fair to assume that this is the same community as that identified in 1754 because Major Locklear, who with his brother John are ancestors of substantially all of the present-day Locklears in the Lumbee tribe, was living on Drowning Creek as evidenced by a January 23, 1754 deed that contains the following legal description; "* * * on the north side of Drowing Creek and on White Oak Swamp being the place where Major Locklear now lives" (NCSA 1754). Another individual identified as a member of the community was Thomas Groom who was at one time the holder of the one of the old fields that the Cheraw has reserved in 1737.

In summary, the present-day Lumbee tribe is descended from an Indian community composed largely of Cheraw Indians and related Siouan-speaking people who were known to have inhabited the area of what is now Robeson County since the eighteenth century. Support for this comes from the anthropologist-historian John Reed Swanton. Called upon in the early 1930s to provide his expert opinion as to the origins of the Lumbee tribe he wrote:

> The evidence available thus seems to indicate that the Indians of Robeson County who have been called Croatan and Cherokee are descended mainly from certain Siouan bribes of which the most prominent were the Cheraw and Keyauwee, but they probably included as well remnants of the Eno, and Shakori, and very likely some of the coastal groups such as the Waccamaw and Cape Fears. It is not improbable that a few families or small groups of Algonquian or Iroquoian may have cast their lot with this body of people, but contributions from such sources must have been relatively insignificant. Although there is some

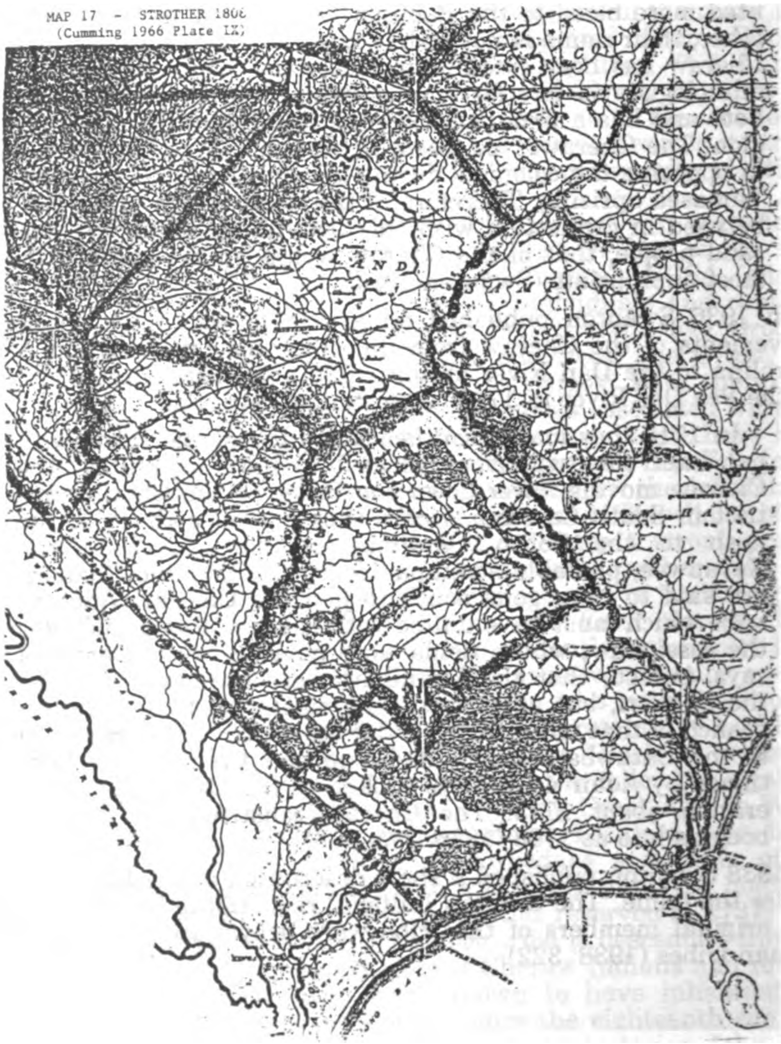
> reason to think that the Keyawee tribe actually contributed more blood to the Robeson County Indians than any other, their name is not widely known, whereas that of the Cheraw has been familiar to historians, geographers, and ethnologists in one form or another since the time of De Soto and has a firm position in the cartography of the region. The Cheraws, too, seem to have taken a leading part in opposing the colonists during and immediately after the Yamasee uprising. Therefore, if the name of any tribe is to be used in connection with this body of six or eight thousand people, that of the Cheraw would, in my opinion, be most appropriate (Swanton 1934).

In 1936 Swanton published an article in which he traced the movements of the Cheraw from the northwestern corner of South Carolina to the Dan River around 1700, and from there southeast to the Pee Dee River in 1710. According to Swanton:

> In 1710 they moved southeast and joined the Keyauwee, but later the two tribes seemed to have separated, the Cheraw moving lower down the Pedee to the Cheraw district in South Carolina, where they proved a thorn in the flesh to the South Carolina colonists. In 1733 the Keyauwee, probably accompanied by the Eno and Shakori, are said to have gone south to join the Cheraw. Another tribe which must have united with them at this period was the Sissiphaw, whose fields were on Haw river. Barnwell says, indeed, that the Sissiphaw were the same tribe as the Shakori, but apparently this means that they were a branch of that tribe. Before 1739 the united tribes removed to the Catawba country, and Eno and Cheraw are mentioned by Adair as dialects spoken in the Catawba confederation about 1743. The Cheraw constituted a distinct body as late as 1768 (1936: 375–376).

In 1938 Swanton published a short description of the Lumbee tribe under the name "The Croatan Indians" reaffirming his opinion that the original members of the tribe were drawn from a number of Siouan tribes (1938: 322).

MAP 17 - STROTHER 1808
(Cumming 1966 Plate IX)



As Swanton points out, this does not preclude the possibility that other Indian individuals and groups might have joined the tribe at various times. In fact, the origins of the Lumbee tribe has been a matter of discussion for the better part of 100 years. In 1888, Hamilton McMillan concluded that the Lumbees were descended from the lost colony of Roanoke, who had inter-married with the Croatan Indians (McPherson 1915:38). He described the early settlement of the area of the Lumbee River as follows:

> At the coming of white settlers there was found located on the waters of Lumber River a large tribe of Indians, speaking English, tilling the soil, owning slaves, and practicing many arts of civilized life. They occupied the country as far west as the Pee Dee, but their principal seat was on the Lumber, extending along the river for 20 miles. They held their lands in common, and land titles only became known on the approach of white men. The first grant of land to any of this tribe of which there is written evidence in existence was made by George II in 1732 to Henry Berry and James Lowrie, two leading men of the tribe, and was located on the Lowrie Swamp, east of Lumber River in present county of Robeson, North Carolina. A subsequent grant was made to James Lowrie in 1738. According to tradition, there were deeds of land of older date, described as "White" deeds and "Smith" deeds, but no trace of their existence can be found (Ibid.: 48–49).

O.M. McPherson, Special Indian Agent appointed to investigate "* * * the condition and tribal rights of the Indians of Robeson and adjoining counties * * *" (Ibid.: 7), endorsed McMillan's argument that the Lumbee Indians "* * * were an amalgamation of the Hatteras Indians with Gov. White's lost colony; the present Indians are their descendants with a further amalgamation with the early Scotch and Scotch-Irish settlers, such amalgamation continuing down to the present time, together with a small degree of amalgamation with other races" (Ibid.: 17). While questioning whether the Lumbees were descended from the Cherokee, McPherson was willing to acknowledge the possibility "* * * that there was some degree of amalgamation between the Indians residing on the Lumber River and the Cheraws, who were their nearest neighbors" (Ibid.: 23).

Swanton classifies the Eastern Siouan speakers into two linguistic divisions: the Tutelo (principally Virginia), and Catawba (North and South Carolina). The Tutelo included the Monahoac, Monacan, Moneton, Nahyssan, Occaneechi, Saponi, and Tutelo. In the Catawba division were the Catawba, Cheraw, and Congaree, as well as the Eno, Keyauwee, Shakori, Sissipahaw, Sugeree (classified as the Eno Branch), and the Cape Fear, Pedee, Waccamaw, Winyaw, Santee, Sewee, Wateree, Waxhaw, Woccon, and Yadkin (Swanton 1946: 10). During the turmoil of the eighteenth century, the tribes in the Catawba division maintained relatively close contact with each other, often sharing the same territory and villages (Swanton 1946; 1963). Dr. Frank Siebert, who conducted linguistic and ethnological research among the Catawba for over twenty years, maintains that the Cheraw spoke a dialect of Catawba (Brasser 1964:

279; Personal communication, Siebert to Campisi, November 21, 1985).

It must be pointed out that Swanton's classification is based as much on conjecture as on linguistic data. Hudson has argued that with the exception of Catawba, Tutelo, and Woccon, there is no linguistic evidence to support including the remaining groups within the Siouan classification (1970: 6–8). Swanton based his analysis upon Mooney, whose "* * * classification is not linguistic; it is one of those 'theories' that are often encountered in early studies of prehistory which seem to simplify but actually distort" (Ibid.: 7). Hudson puts the issue of linguistic and political correspondence in a suitable perspective:

> As a general rule, it is hazardous to extrapolate from linguistic classifications; with rare exceptions, one cannot expect to find a simple coincidence of linguistic, cultural, and racial boundaries. Indeed, the picture is already so confused we would do well to simply abandon the "Eastern Siouan" classification, admit that the hiatus in our knowledge of the Southeast exists, and begin anew (Ibid.: 9).

In the Revolutionary War the population of North Carolina was divided in its allegiance, and there were frequent battles between those loyal to the colonies and those who supported the Crown. The Lumbees apparently sided with the colonies, quite possibly serving with Francis Marion, "the Swamp Fox," who, on occasion, took refuge in the Red Banks area, an area of Lumbee settlement (Dial and Eliades 1975: 36). A.W. McLean described the part played by the Lumbees:

> During the Revolution some of these Indians served in the Continental ranks, as well as in the more local organizations raised by the State of North Carolina.
>
> The territory embraced in Robeson County was much divided in sentiment, and toward the close of the Revolution it was the scene of murderous civil warfare of unparalleled atrocity.
>
> The tradition of these people that some of their leaders fought on the side of the Colonies seems to be corroborated by certain circumstances. Giles Lietch says that during the Revolution some of these families acquired a considerable number of slaves. Had they acquired them from North Carolina, these slaves would have been recovered on the return of peace. Such slaves as the British captured, they sent either to Florida or Nova Scotia. It is therefore probable that these slaves held by these Robeson County Indians were acquired from South Carolina. Marion raised his celebrated band largely in that part of North Carolina, and as an inducement for serving with him he offered as pay to his North Carolina troopers slaves taken from the South Carolina Loyalists. So many of these were thus taken and held by his North Carolina troopers that after the war the question of their return became a matter of State Legislation.
>
> After the war, feeling against the local Tories ran so high that they were discriminated against and severe tests

> of loyalty were applied. There seems to have been no feeling against these Indians, for although not white they were allowed to vote as "freemen," without any change being made in the law to include them, although only whites had earlier been allowed to vote * * *.
>
> Had they been of the Tory element probably they would not have been allowed the right of suffrage, because the feeling against Tories was very bitter, especially in that region where they lived (U.S. House of Representatives 1913).

Dial and Eliades identify from pension records eleven Lumbees who served in the Revolutionary War. They are John Brooks, Jacob Locklear, Samuel Bell, James Brooks, Berry Hunt, Thomas Jacobs, Michael Revels, Richard Bell, Primus Jacobs, Thomas Cummings, and John Hammond (1975: 35, fn 3). Lumbees also served in the War of 1812 (U.S. House of Representatives 1913: 14–15). The names of a number of ancestors of present-day Lumbees appear on the 1790 census, as well as subsequent censuses. The data indicate the presence of a well established community whose heads of households are directly related to the contemporary tribal population.

Although generally classified as free non-whites or mulattoes during the post-Revolutionary War years, the Lumbees appear to have been treated more generously than free blacks, being allowed to vote without challenge (U.S. House of Representatives 1913: 14–15). The county tax returns show Lumbees owning property in various communities in the county, but concentrated in the more centrally located townships around present-day Prospect and Red Banks. However, this liberal treatment was limited as is illustrated by the case of Mary Cumbo who was prosecuted as a "free person of color" in the 1820s for allegedly trading with slaves (NCSA 1838).

In the 1830s, two seemingly unrelated actions—one by the national government and the other by the state of North Carolina—converged, their synergism having a disastrous impact on the Indians of the state. In 1830 the United States Congress passed legislation providing for the removal of all Indian tribes east of the Mississippi River to land set aside in the "Indian territory" in Oklahoma. Tribes such as the Cherokees and the Creeks were forced to leave. The purpose of the act was to clear land for white settlement, and tribes with high visibility and valuable land were prime candidates.

> The final assault against the Southeastern Indians came in the 1830s. Seldom in modern history has one people's aggression against another been so unforgiving, so relentless, and marked by such terrible results. The world of Southeastern Indians changed greatly before 1830, but what happened after 1830 virtually brought it to an end. In one great political and economic crunch the Americans gained a large portion of a continent, along with all its natural resources. At little cost they forced the Indians out of their homeland, for all but the Seminoles were already too beaten to offer much resistance. The impetus for re-

> moval came not from the poor whites on the frontier, but from the Southern planters, politicians, and land speculators. Many of their countrymen opposed removal, but those who were in favor of the policy prevailed in the end, although it was at the cost of a deep sectional division in the country which eventually ended in civil war. It was with Indian removal that the seemingly perpetual availability of free land became a dominant factor in American history (Hudson 1976: 451).

In the climate of removal, it did not benefit a tribe of Indians to manifest its identity overtly. Lumbees, like other Indians in the state held their land in severalty, but often without patents. Thus, they were in a precarious position.

Along with removal, there was an increasingly strident debate over slavery. As Dial and Eliades describe it:

> * * * the question of slavery also appeared in national politics, partly as an aspect of what would be a continuing dispute over state's rights, but mainly as an independent issue. On January 1, 1831, William Lloyd Garrison issued the first edition of his abolitionist newspaper The Liberator. The slavery issue would not again slip into the dark recesses of the national mind. Then, eight months later, the visionary Nat Turner staged his insurrection in Southhampton County, Virginia. For ten days all southern eyes and thoughts were focused on Virginia and what this development portended. When it became known that fifty-seven whites were dead, the South recoiled in mournful shock. Always frightened at the prospect of slave uprisings, the whites of the Old South would not again sleep easy. Never mind that few slaves joined Turner's uprising, or that approximately one hundred Negroes were killed in the manhunt that captured him, or that Turner and nineteen others were tried and executed. Garrison and Turner traumatized the ante-bellum South and henceforth all non-whites would pay for the fears they had fired (Dial and Eliades 1975: 39).

Relations in North Carolina between whites and "people of color" steadily worsened after the Turner uprising, and in 1834 the paranoia was given legislative status. As the population of the western counties grew so did the controversy over the allocation of power. In 1834 the state's electorate voted to hold a constitutional convention to resolve the dispute over representation. After agreeing that representation in the upper house would be based on wealth and property, and that representation in the lower house would be based on population, the convention turned its attention to "* * * the abrogation or restriction of the right of free Negroes or mulattoes to vote for members of the Senate or House of Commons" (NCSA 1836). After a lengthy debate, the convention adopted the following constitutional provision:

> No free negro, free mulattoe, or free person of mixed blood, descended from negro ancestors to the fourth gen-

> eration inclusive shall vote for members of the Senate or House of Commons (Ibid.: 421).

The constitution was subsequently adopted by a vote of 26,771 to 21,606 (Dial and Eliades 1975: 41).

The two actions trapped the Lumbees; a vocal assertion of their Indianness could have resulted in efforts to remove them, while compliance with the constitutional change in their status could have had the effect of imposing on them the restrictions placed on free blacks. However, as Dial and Eliades point out:

> The Lumbee Indians watched the developments of the previous twenty years with some uneasiness; and yet they could not bring themselves to be unduly alarmed. After all, they were not tribal Indians subject to removal. They had long enjoyed the prerogatives and met the responsibilities of citizenship, and the new constitution said nothing about depriving Indians of any rights they possessed. But the Lumbees misread the signs; the future was not going to be like the past. The authorities were pouring a cup of misery for all non-whites. Whatever distinctions that had existed in the past would be erased with a single mindedness of purpose that was awesome in its implications for the Lumbee Indians (Ibid.).

The Lumbees soon found that their unique status as Indians was threatened by the application of new laws regarding the rights of non-whites. In a series of cases between 1837 and 1860 tribal members were charged under the provisions of these laws that limited "free persons of color" carrying firearms, serving on juries, voting, and the like. In most instances, offending tribal members were freed on a technicality, but the implication was clear.

One case, however, went far to recognize the Lumbees as Indians. In 1857, a William Chavers was arrested and charged as "a free person of color" with carrying a shotgun. During the trial he alleged that he was white, and therefore not subject to the restriction. Nonetheless, he was convicted. He promptly appealed on a number of grounds, including one that argued that the law did not apply to him since it did not make it criminal for a free person of color to carry a gun, only a free Negro. The appeals court reversed the lower court, making a distinction between free Negro and free persons of color. The former is defined by the statute:

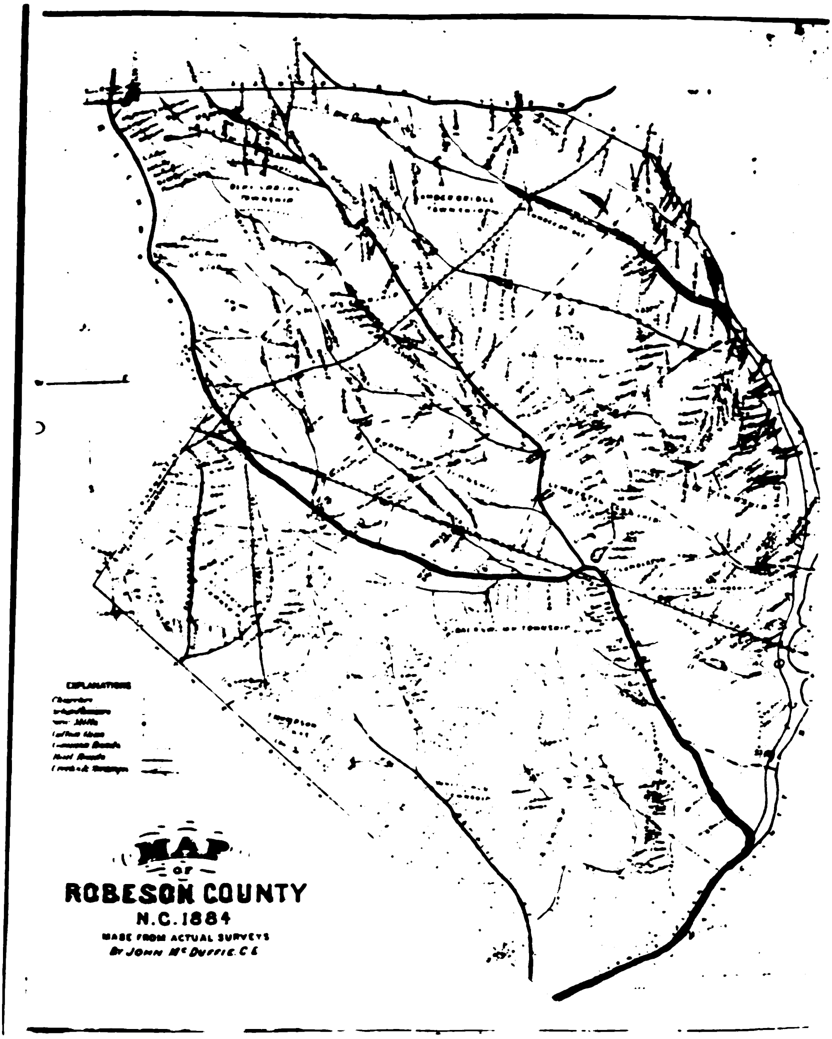
> All free persons descended from negro ancestors, to the fourth generation inclusive, though one ancestor of each generation may have been a white person, shall be deemed free negroes and persons of mixed blood (North Carolina General Statues, Act of 1855 Chap. 107, Section 79).

Basing its opinion on this definition the court found that "Free persons of color may be, then, for all we can see, persons colored by Indian blood, or persons descended from negro ancestors beyond the fourth degree" (State v. William Chavers 1857 50 N.C.: 25). For all intents and purposes, the free population of the state had three categories of race; white, being persons with no known Black or Indian ancestry; free Blacks, individuals with at least one-sixteenth Black ancestry, and free persons of color, who either were of Indian

ancestry or less than one-sixteenth Black. Presumably, an individual who was Indian, but with a Black ancestor beyond the fourth generation, would be classified also as a free person of color. The following year, in another case involving a Lumbee, the appeals court held that forcing an individual to display himself before a jury was tantamount to compelling him to furnish evidence against himself (State v. Asa Jacobs 1858 50 N.C.: 256). Thus, the burden shifted to the state to prove that an individual was a free Negro through the introduction of genealogical data.

The Civil War

During the Civil War the Indians of Robeson County were prohibited from serving in the Confederate Army and were, instead, conscripted into labor gangs and assigned to build fortifications at the mouth of the Cape Fear River to protect the city of Wilmington. The conditions were harsh and the treatment brutal. To add to the peril, a yellow fever epidemic struck Wilmington in 1862–63, driving out many of the inhabitants and decimating the slaves and conscripted laborers brought in to do the work (Evans 1971: 34–35).


MAP
OF
ROBESON COUNTY
N.C. 1884
MADE FROM ACTUAL SURVEYS
BY JOHN McDUFFIE C.E.

For the Lumbee Indians the forced labor was the final insult, their treatment being no better than that accorded the slaves. Those who could do so escaped and returned home where they hid out in the swamps of Robeson County.

In 1860 Robeson county consisted of three distinct populations: a landed slave-owning gentry of Scotish ancestry, who owned much of the best land in the county, Gaelic-speaking Scots called "Buckskins," who kept largely to themselves and who lived along the western primeter of the county; and the Indians, who occupied small plots among the swamps that bordered the Lumber River. These swamps presented an almost impenetrable barrier.

> Before the development of transportation, however, the valley of the Lumber was relatively backward and sparsely populated. This was because the productive land was cut up and crisscrossed by pocosins, or "bays," the curiously oval-shaped swamps characteristic of the eastern Carolinas. These have no particular significance now that good roads have been constructed, but in early historic and prehistoric times they may well have acted as a sort of filter determining the kind of people who settled the region. This was because in primitive days the chief mode of transportation was the dugout canoe; and in the Lumber River region the navigable watercourses were separated from the farm lands by tangled, almost impenetrable swamps. This difficulty was enough to discourage men from settling in the region. But not all men (Ibid.: 21).

Besides Indians, the swamps provided refuge for Union soldiers who had escaped from the nearby Confederate camps. Because of their treatment by the Confederacy, and more particularly the Home Guard, the Lumbees gave assistance and protection to these soldiers. As the number of Lumbees and Union soldiers "laying out" increased, so did the burden of feeding them. With so many men in hiding or conscripted, there were few to do the farm work. The attitude of the Lumbees changed from a passive one to one marked by belligerence. In short order, a band emerged, led by the sons of Allen Lowrie (Ibid.: 35–38).

Matters came to a head in 1864 when the Lowries slaughtered several pigs belonging to a planter named James P. Barnes. Unable to get satisfaction for his loss, Barnes resorted to directing conscription officers to the Lowries' house. The Lowries' retaliated by killing Barnes (Ibid.: 38–39). Following this they went after the conscription officer, James Brantley Harris. Apparently warned, Harris set up an ambush and killed an innocent member of the tribe, whose name was Jarman Lowrie, a cousin of Henry Berry Lowrie. Harris next killed two of Jarman's brothers who had just returned from conscripted service. On January 15, 1865, the Lowrie Band caught up with Harris and killed him (Ibid.: 40–41).

The Lowrie Band continued raiding plantations throughout the winter of 1865, taking what food and material they needed. In March, 1865, the reinforced Home Guard captured William Lowrie, who was most probably the band's leader, and his father, Allen, and after holding them for a short time, executed them. This was followed by a virtual reign of terror during which the Home Guard

tortured members of the Lowrie family and their kinsmen in order to learn where the other members of the band were hiding (Ibid.: 43–53).

The end of the Civil War did not bring an end to the fighting. The band, now led by Henry Berry Lowrie, struck back at the local constabulary. By 1870, Henry Berry had put together a formidable band that was able to defy the local authorities with impunity and style:

> The Lowry Band was thus reconstituted; and although he was not quite twenty, Henry Berry was not its unquestioned leader. It would seem that such a group could not escape the Police Guard, strengthened by the return of Confederate veterans. But six years later some members of the band would still be free and even offering rewards for the capture of their pursuers. Yet, except for when the militia was around, these men did not vanish into the swamps. On the contrary Henry Berry "as well as his followers were often on the public highways or at work for the citizens. They ventured to attend church occasionally at New Hope [Chapel] * * * in Scuffletown, but it was observed that they always went armed."
>
> It seems clear that the arms of less than a dozen men were no match for the militia. They survived because of a one-way flow of information in Robeson county. The Lowrys were usually well informed as to the whereabout of the militia: the authorities were usually misinformed as to the whereabout of the Lowrys (Ibid.: 75–76).

Henry Berry continued his raids and other exploits until the winter of 1872 when he disappeared. The details of that disappearance are not known (Ibid.: 243–253). The turmoil did not end until the death of the last member of the band, Steven Lowrie, in 1874 (Dial and Eliades 1975: 82).

Perhaps Evans sums up best the importance of Henry Berry Lowrie to the subsequent history of the tribe:

> What in fact did happen to Henry Berry Lowry? So far as verified, uncontradicted historical facts are concerned, in February, 1872, he might as well have been swallowed up by the winter mist that rises from the quagmires of Back Swamp. There the marked trail ends and Henry Berry enters that twilight world of hearsay and legend. But perhaps this is the most important part of the story—because legends are more indestructible than men, even men like Henry Berry. So long as he appeared from time to time in the flesh, there was always the possibility that he would be seized, humiliated, and used to prove once again that if you are poor, have dark skin, or lack status, you will certainly pay dearly for rebellion * * *
>
> It is not possible to summarize here all the lore that has accumulated around the name of Henry Berry. But it may be said that one thing is certain: he made a difference in Robeson County. He gave the Indians, with all their diverse origins, the sense of being one people. From just what tribal origin one was not quite sure, whether

> Lumbee, Cherokee, Croatan, or descended from the survivors of the unsuccessful English colony on Roanoke Island during the 1580's. But one people they certainly are—united by ancient bonds of kinship, friendship, and above all the towering image of Henry Berry, who, living or dead, imparted some of his personal qualities to the thousands of brown-skinned people living along the banks of the Lumber.
>
> The Indians have drawn strength from a mighty legend. As a result their subsequent history has been somewhat happier than that of the Negroes, during the years following the failure of the Reconstruction experiment in democracy, when there emerged a new, one-party South, based on restricted suffrage and repression. No one ever succeeded in putting Indians in what the Conservatives called their place, that is, the half-free status that Indians and non-slave Negroes had been before the war (Ibid.: 250–253).

Nineteenth century—Post Civil War

In 1868 the Republican controlled legislature amended the state constitution, restoring male suffrage and providing for a system of free public education. The following year the legislature passed a school law that provided for separate white and black schools to be funded by township or county taxes (Lefler and Newsome 1954: 500). After establishing a bi-racial system of education, the white leadership denied the Lumbees access to the white school system. The Lumbees, for their part, refused to send their children to black schools. Thus, whatever schooling the Indian children received came from subscription schools, private tutoring, or religious organizations.

For the first two decades following the establishment of segregated schools, the Lumbees continued their refusal to participate. Slowly, the Democratic county leaders became aware of the tribe's voting potential.

> Thoughtful Democrats were slow to see the significance of the political power of the Indians. The Indians were voting against them and were demanding separate schools for their children. It took ten years for the Democrats in the county to see that in order to win the Indians' support they would have to do something for them (Oxendine 1945: 24).

In 1885, the North Carolina General Assembly passed an act recognizing the Lumbee tribe, and naming it Croatan, at the same time establishing a separate school system for the benefit of tribal members (N.C. Laws 1885, Ch. 51: 92–94). The bill was sponsored by Hamilton McMillan, an influential legislator from Red Springs, on the northwestern end of Robeson County. McMillan had spent several years investigating the tribe's history, and soon became a champion of their cause for a separate educational system. Writing of this time, Dial and Eliades observe:

> The Indians, fortunately, had an advocate for their cause in the North Carolina General Assembly in the person of

> the Honorable Hamilton McMillan of Red Springs, representative from Robeson county. * * * McMillan investigated the origins of the Robeson Indians and concluded that they were descendants of the "Lost Colony" and a tribe of coastal Indians he mislabeled the "Croatans." Consequently, he sponsored and successfully supported legislation giving the Indians of Robeson County a legal designation and the privilege of having their own public schools, under their own direction. The two significant provisions of the law were: Section 1. "That the said Indians and their descendants shall hereafter be designated and known as the Croatan Indians;" and Section 2. "That said Indians and their descendants shall have separate schools for their children, school committees of their own race and color and shall be allowed to select teachers of their own choice * * *" (Dial and Eliades 1975: 90).

As McMillan described it, "In 1885 I got the North Carolina Legislature to recognize them as Croatans and give them separate public schools" (McPherson 1915: 39–40). After the passage of the act, the Democratic party received the Indian vote at the next election (Oxendine 1934: 49–50).

The principal features of the 1885 law were:

1. Recognition as Croatan Indians;
2. Separate Indian schools;
3. Separate school committees;
4. Selection of teachers of their own choice;
5. Pro rata share of the county's school funds;
6. Fiscal disbursement through the county;
7. Development or expansion of schools initially controlled by the county board of education;
8. Right of Indian children in Robeson County to attend Indian schools outside their resident districts;
9. Eligibility to attend Indian schools limited to Croatans "now living in Robeson County and their descendants; and
10. Application of general school laws to the Indian school system unless inconsistent with the 1885 act (North Carolina Laws 1885, Ch. 51: 92–94).

In general, the Indian school system was intended to co-exist in with the existing county board of education's non-Indian administrative jurisdiction, but with two exceptions. Implicitly, the Indian school committees were empowered to determine the eligibility of students to attend, and explicitly, they were empowered to hire their own teachers.

The authorization of a school system did not automatically implement a school program. Besides buildings and teaching materials, the Lumbees needed teachers. Forty years without schools had resulted in high levels of illiteracy in the community. Therefore, the Lumbee tribal leaders requested McMillan's assistance. He responded by sponsoring legislation to establish an Indian normal school (Dial and Eliades 1975: 90).

On February 2, 1887, the North Carolina House of Representatives received the following petition:

> To the Honorable, the General Assembly of North Carolina—
>
> We the undersigned Croatan Indians of Robeson County in North Carolina, do respectfully ask, that you establish for us, a Normal School in Robeson County, for our race, and we do further ask that you do amend the general law upon marriages, as to make it a misdemeanor for any croatan and negro to marry, and declare such marriages hereafter contracted, utterly void (NCSA February 2, 1887).

The petition was signed by 67 Croatans and six "White Citizens." The Croatan signers were:

James Oxendine, Alamander Locklear, Isham Locklear, J.H. Harris, James Braboy, B.J. Chavis, James Bullard, Robert Collins, Machire Locklear, Evander Blue, Malakiah Locklear, Nelson Locklear, Alexander Locklear, J.P. Locklear, Neill Oxendine, Solomon Oxendine, Jordan Oxendine, Purvie Jacobs, Murdoch Chavis, A.J. Lowrie, Peter Dial, Thomas Deas, Thomas Sanderson.

Hector Locklear, J.W. Oxendine, Magilbra Brayboy, William L. Locklear, Harrison Ransome, James Dial, Soliman Locklear, Winslow Locklear, Isham Locklear, Peter Bullard, Isaac Brayboy, Turnner Lowerie, W.L. Moore, Zion Lowrie, Hugh Oxendine, J.L. Monroe, Asbury Oxendine, N.A. Locklear, Henry Brayboy, A.J. Revels, Nelson Chavis, A. Bullard.

William Goins, Archie Oxendine, G.W. Lowrie, Isac Braboy, John E. Oxendine, Wesley, Bullard, Thomas Locklear, James I. Lowrie, J.J. Oxendine, Preston Locklear, J.C. McEachin, Jr., Willey Jacobs, Joseph Locklear, Brown Lowerie, Alva Oxendine, J.W. Willis, Jack Oxendine, Wm. Jacobs, Hector Sanderson, Israel Rodgers, Paisly Sanderson. Virtually every traditional Lumbee name is represented in this list.

On February 10, 1887, Hamilton McMillan introduced the requested legislation, under the title a "Bill to establish a Normal School in Robeson County" (NCSA February 10, 1887), and was enacted into law on March 7, 1887 (NC Pub Laws, 1887 Ch. 400: 699–701). On the same day the General Assembly amended the marriage law to include the prohibition against marriages between Lumbees and blacks (NC Public Laws, 1887. Ch. 254: 499).

The act contains eleven sections. The first provided:

> That W.L. Moore, James Oxendine, James Dial, Preston Locklear, and others who may be associated with them, and their successors, are hereby constituted a body politic and corporate, for educational purposes, in the county of Robeson, under the name and style of the trustees of the Croatan Normal School, and by that name may have perpetual succession, may sue and be sued, plead and be impleaded, contract and be contracted with, to have and to hold such property, including buildings, lands, and all appurtenances thereto, situated in the county of Robeson, at any place in said county to be selected by the trustees herein named, provided such place shall be located between Bear Swamp and Lumber River in said county; to acquire by purchase, donation, or otherwise, real and personal property for the purpose of establishing and main-

taining a school of high grade for teachers of the Croatan race in North Carolina.

The act empowered the named trustees to select one of their number to serve as president and to select three additional trustees " * * * from the Croatan race in such manner as they may determine," to hire teachers according to their own rules, and to fill vacancies on the board of trustees by a majority vote (*Ibid.*). Further, the act provided $500 for each of the first two years to pay teachers' salaries. It guaranteed that the property would be tax free so long as it was used for educational purposes, and required of every student who attended that they "previously obligate to teach the youth of the Croatan race for a stated period" (*Ibid.*). The act did not provide funds for the purchase of land or the construction of a building, and the two year limitation on funding suggests that the General Assembly was prepared to see what the tribe did with the opportunity before it committed any additional funds. Despite these limitations it is clear that the legislature had vested in the tribe considerable authority to manage its own educational affairs, and that it recognized that the tribe had a number of well established leaders, some of whom it named in the act.

In the 1889 the General Assembly amended the 1885 act by including in section two of the law the following words, "and there shall be excluded from such separate schools for the said Croatan Indians all children of the Negro race to the fourth generation" (Laws of North Carolina 1889, Chapter 60; as quoted in McPherson 1915: 228). It fell to the school committees to determine student eligibility. Their power was soon tested. In 1890 a school committee denied admission to the children of a McMillan family. They appealed the decision to the North Carolina Supreme Court, which upheld the action of the school committee on the basis of Negro descent within the fourth generation. The decision virtually assured Indian control of their shcool system. It also provided a menas for determining tribal membership.

The political context for passage of these acts is significant. In 1885 the Democrats had sought a rapproachement with Robeson County's Indians through the establishment of the Croatan School system. This proved unsatisfactory due to the history of educational oppression and the absence of qualified Indian teachers. Conservative Democrats had controlled the General Assembly and the governorship for about a decade (with slim majorities in the General Assembly since 1870), and the rigid do-nothing regime was under increasing criticism (Woodward 1951: 189–204).

By 1887 the growing dissatisfaction of the agrarian-reform wing of the Democratic Party, both at the state and the national levels, led to the formation of a national organization called the Farmer's Alliance. In 1891 this segment of the Democratic Party captured the General Assembly, giving the state "the Farmer's Legislature," with its reform program. One of the Alliance's chief aims was a common school system for the rural poor. In the elections of 1894 and 1896, the small-farmer Democrats joined with Republicans, and captured control of the Assembly, thus giving the state the so-called "Fusion Rule" (Ferguson 1969: 130–133).

Robeson County in the 1880s was predominantly rural and agricultural, with a sizable Republican vote. Consequently, the Demo-

cratic hold on the county was fragile, dependent in large part on the fear that blacks and Republicans would take over as they had during the Reconstruction period. Given these electoral dynamics the Lumbee leadership appears to have taken advantage of the Democrats' predicament in 1887 by emphasizing that normal school legislation would help the Indian community to separate itself from the county's black population, thus strengthening the Democrats' hold on the county. In light of the critical role of Robeson County in statewide politics in 1875, an appropriation of $1,000 over two years was a small price for the legislature's Democratic majority to pay in exchange for the opportunity to seriously weaken the county's Republican strength and drive a wedge between the blacks and the Lumbees.

The passage of the legislation establishing the normal school did not meet with universal acceptance within the Lumbee community. Some considered it a trap rather than an opportunity, while others conceived that the leadership had sold out to the Democrats for personal political gain, although the record is clear that this was untrue. More compelling is the explanation given by Dial and Eliades:

> Since neither the state nor the federal government had ever before assumed any responsibility for their welfare, most of the Indians were wary about the legislation establishing the Normal School. The majority shared suspicions borne of fifty years of discrimination. It was difficult for them to believe that the whites would do something for their advancement. As a result, when W.L. Moore called a meeting to implement the provisions of this law, very few attended. Only with great difficulty could Moore arouse interest in the project and raise funds for land acquisition and construction of a building. Even then, he found it necessary to contribute $200 of his own funds and to devote his energies full time to the school, so that it could open (1975: 91).

The school, consisting of one two-story building, opened in the fall of 1887 with fifteen pupils. Its first principal and teacher was W.L. Moore, who had himself completed four years of normal school before moving to Prospect (Ibid.: 91, 93). The school struggled through the early years with inadequate staff, funding, and materials. In 1889 the legislature increased the annual appropriation to $1000, but this fell far short of the need (Ibid.). W.L. Moore served as teacher-principal, without pay, for the first three years. The difficulties faced by the tribal leaders in raising funds, finding teachers, and recruiting students for the developing school system were compounded by the religious differences in the community, rivalries among community leaders, and the miserly support given by the state. In the face of these and other problems, a number of Lumbee leaders decided to petition Congress for assistance. In December, 1888, forth-four members of the tribe signed a petition in which they requested an appropriation for the tribe's use.

> State of North Carolina, county of Robeson.
> To the Honorable the Congress of the United States:

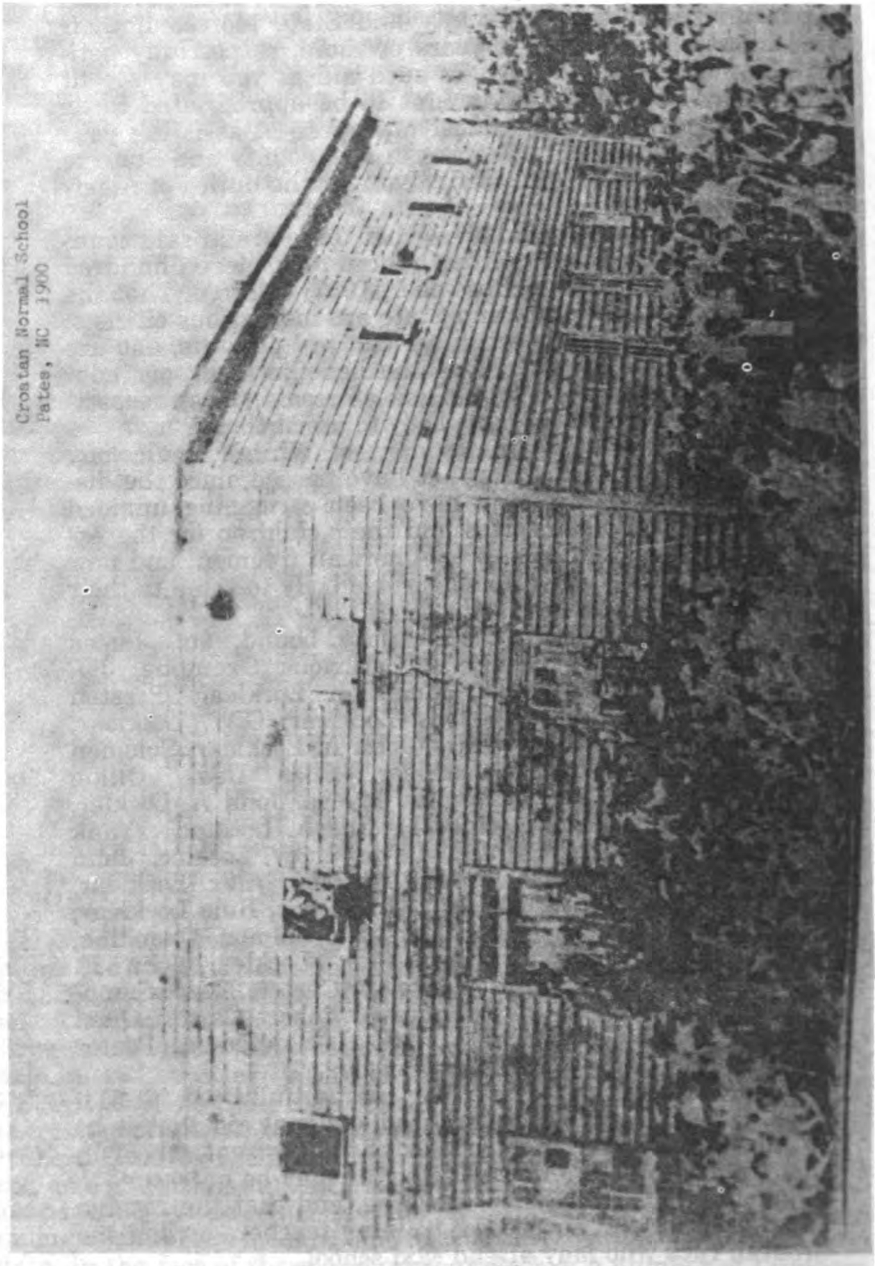
The undersigned, your petitioners, a part of the Croatan Indians, living in the County and State aforesaid, their residence for a hundred years or more, respectfully petition your honorable body for such aid as you may see fit to extend to them, the amount to be appropriated to be used for the sole and exclusive purpose of assisting your petitioners and other Croatans in said county and State to educate their children and fit them for the duties of American Citizenship.

Your petitioners would show that there are in said county, of legal school age, of the Croatan race, eleven hundred and sixty-five (1,165 in December, 1887) children. That the Croatans in said county and State are industrious citizens, engaged for the most part in agricultural pursuits, and are unable to give their children the benefits of proper educational training, and would, as aforesaid, most respectfully petition your honorable body to assist them.

Your petitioners are a remnant of White's lost colony and during the long years that have passed since the disappearance of said colony have been struggling unaided and alone to fit themselves and their children for the exalted privileges and duties of American freemen, and now for the first time ask your honorable body to come to their assistance.

And your petitioners as in duty bound, etc. James Oxendine, Ashbury Oxendine, Zackrious Oxendine, J.J. Oxendine, Billy Locklear, Malakiah Locklear, Preston Locklear, John Bullard, Crolly Locklear, G.W. Locklear, Patrick Locklear, Luther Dees, John A. Locklear, Solemon Locklear, Anquish A. Locklear, Silas Deas, Olline Oxendine, Isaac Brayboy, James Lowrie, John A. Lockler, Marcus Dial, Josep Locklearr, Eliach Lockler, Frank Locklar, W.W. Lockler, J.E. Lovit, Buey Lockler, John Lockler, Marcus Dial, Joseph Locklear, Alex Locklear, Frank Locklear, W.W. Locklear, J.E. Lovit, Buie Locklear, John Locklear, Joseph Locklear, Jr., Solmon Oxendine, A.J. Lowrie, Gorge Brayboy, Pink Lockler, John E. Oxendine, William Sampson, Steven Carter, Evert Sampson, Wues Sampson, John Sampson, Robert Carter, Quen Godwin, Jordan Oxendine, James R. Sanderson, Peater Dyall, Willey Jacobs, Murdock Chavous.

Your petitioners above named respectfully ask that if your honorable body admits an educational aid that it be so appropriated for the trustees of the normal school in said county to use so much thereof as may be necessary to complete the normal-school building, and that the residue be applied for the purpose of training teachers among the Croatan race who may attend said school.



Croatan Normal School
Pates, NC 1900

This exchange of correspondence prompted Commissioner Morgan to write another letter to McMillan, dated July 14, 1890. McMillan replied immediately, saying that he had not received the earlier letter and its enclosures. "Had they been received I would have responded with pleasure (Ibid.: 39). He then went on to describe the tribe's history and his role in providing the assistance they had received from the state. "If you can aid them," he wrote, "in the way desired we would be glad. They are citizens of the United States and entitled to the educational privileges enjoyed by other citizens, but those advantages are not much" (Ibid.: 40).

On August 11, 1890 Commissioner Morgan sent his decision to W.L. Moore.

> SIR: Referring to your letter of July 2 and office response thereto of the 16th, I have received a communication from Hamilton McMillan, of Red Springs, N.C., setting forth the situation of the Croatan Indians very fully. It appears from his statement that this band is recognized by the State of North Carolina, has been admitted to citizenship, and the state has undertaken the work for their education.
>
> While I regret exceedingly that the provisions made by the State of North Carolina seem to be entirely inadequate, I find it quite impractical to render any assistance at this time. The Government is responsible for the education of something like 36,000 Indian children and has provision for less than half this number. So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans or any other civilized tribes.
>
> I am obliged to you for calling my attention to the matter, and have been very much interested in the information furnished by Mr. McMillan regarding this very interesting tribe (Ibid: 40).

The denial of services was based solely on economic considerations, the commissioner implying that if there were sufficient funds available services would be provided to tribes he referred to as civilized. In 1895 tribal members again petitioned the Congress for an appropriation "* * * to aid in the support, maintenance, and improvement for the Normal School for Croatan Indians in the said County of Robeson (NCSA January 14, 1895). The matter was referred to committee. In support of the tribe's petition the North Carolina General Assembly passed a resolution urging its congressional delegation to support the petition (Ibid.).

Churches

There is evidence that churches existed in the Lumbee community as far back as the eighteenth century. According to C. Franklin Grill, historian of the North Carolina Conference of the United Methodist Church, "[t]he earliest Native American church in the county [Robeson] was Saddletree Meeting House or Hammonds located five miles north of Lumberton on the Stage Road dated in 1792" (Grill March 27, 1984). But is was not until the 1870s that these churches united to form their own associations, or joined ones already in operation.

By the 1870s there were at least four other Methodist congregations located at Union Chapel, Bee Branch Church, Hammonds or Saddletree, and Pleasant Hill. There were probably no church structures, since a marginal note indicates that the congregations met in private homes (Circuit Register for the Robeson Circuit, 1870–1877). The United Methodist Church of Prospect was organized in 1874, although the church was in existence as early as 1871. A local newspaper mentions U.S. soldiers being stationed near the church in that year (Wilmington Star September 7, 1871). Additional evidence comes from a letter received from the Reverend J. Claude Chaffin writing about his grandfather, who was a Methodist minister in Robeson County. In the period from 1865 through 1884 the Reverend W.S. Chaffin served Methodist churches in the Moss Neck area—Union, New Hope, and Saddletree, as well as Hopewell, Horeb, and Asbury.

> Grandfather seems to have had a good ministry in the churches prior to the last month of 1867. He refers to a two-day meeting at Hopewell at which a large congregation was present and a deep, powerful feeling in the meeting. He refers to preaching to a large crowd at Union at which he baptized 27 children. He refers to preaching at New Hope and baptizing 31 children. None of these churches are in the North Carolina Conference at present (Chaffin November 25, 1983).

During the fourth quarter of the nineteenth century most Lumbees were either Methodist or Baptist. Methodism among the Lumbee dates as early as the Civil War. For example, during the post-Civil War period Patrick Lowrie, brother of Henry Berry Lowrie, was a Methodist (Evans 1971: 68). In 1844 the Methodist churches in the north and the south split over the question of slavery, and those in the south formed the Methodist Episcopal Church, South. Those in the north retained the name Methodist Episcopal Church. In a letter to Adolph Dial, J. Claude Chaffin, a minister and historian of the Methodist Church in North Carolina, describes the relationship between the split in the church and the development of Methodism among the Lumbee.

> In 1865, the Methodist Churches in Robeson County were affiliated with the Methodist Episcopal Church, South. In the years 1868 to 1869 to the Methodist Episcopal Church began sending preachers into the southern States, and in the tension and difficulty in Robeson in the late 1860's the churches I have mentioned [the Indian churches of Union, New Hope, Saddletree, Hopewell, Horeb, and Asbury] may have become affiliated with the Methodist Episcopal Church. Several United Methodist Churches in Robeson today, as you know, actually became affiliated with the North Carolina Conference when the Methodist Episcopal Church and the Methodist Episcopal Church, South, reunited in 1939.
>
> Your book [The Only Land I Know] made me aware that the churches I have mentioned may have been among the churches affiliated with the Methodist Episcopal Church which withdrew from that church in 1900 and became the

> Holiness Methodist Church of the Lumber River Annual Conference (Chaffin November 25, 1983).

Chaffin's grandfather had been a circuit minister in Robeson County in the Reconstruction period and had served a number of churches in the area occupied by the Lumbees in 1868 and 1869. It is from the writings of his grandfather that Chaffin draws the conclusion that the "tension and difficulty in Robeson," and the rise of the northern church coincidental with the ascendancy of Radical Republicanism. Under Republican influence, the Indian Methodists broke with the solid front of white Methodists in the South and joined the Northern Conference. This move reflected more than the Indian-white polarization during the height of the Lowry Band; it represented an affirmative, political defiance of the traditional dominance by white, conservative Democrats in the county, and also contributed to the insularity of their church affiliation.

The independence exhibited by the Lumbees of their white Methodist neighbors manifested itself in the 1880s when a significant group of the United Methodist decided that the time had come for the Lumbees to form an entirely Indian Methodist Conference. W.L. Moore and other prominent Methodists opposed this, but in 1900 a separate conference called the Lumbee Methodist Conference was formed by the Hopewell Lowrys—the brothers Henry H., Calvin C., and French R. Lowry, all nephews of Henry Berry Lowrie. After the formation of the Indian conference, the Methodist Episcopal Church, on September 20, 1902, expelled Lowry and his followers, and revoked the right of marriage and baptism by ministers of the new conference. This in no way deterred the Lowrys, who continued to exercise a dominant influence for the next sixty-two years (Dial and Eliades: 109). Dial and Eliades have provided the following description of the factionalism of the time.

> The second largest denomination among the Lumbees is the Methodist Church. The Methodists are split into two groups, the North Carolina Conference of the United Methodist Church and the Holiness Methodist Church of the Lumbee River Annual Conference. The latter is commonly known as the Lumbee Methodist Conference. Though the division occurred in 1900, the roots of the factionalism go back into the nineteenth century. The leaders of Lumbee Methodism at the time of the split were Rev. Henry H. Lowry and Rev. William Luther Moore. Lowry led the segment that broke away from the existing Methodist organization, whereas Moore remained as the leader of the established conference. It would be easy to blame the division on personality differences or rivalry for leadership; however, this does not appear to be the case. Lowry and Moore remained life-long friends until Moore's death in 1931. The reason for the formation of the Lumbee Methodist Conference was to bring self-determination to the Lumbee people, to create an organization in which the Lumbees made the decisions from top to bottom. At their organizational meeting on October 26, 1900, they stated that their purpose was to organize a "Conference for the Indian descent" (Ibid.: 1975: 108).

The Preston Church, which follows the teachings of the Plymouth Brethren, formed around 1915. It is unclear what led to its formation; it may have been a result of a tragedy that divided two large families causing the one to leave the United Methodist Church of Prospect, or it may have been the product of a doctrinal division similar to the one that had split the Methodist Conference some fifteen years earlier. From what can be determined, the church gained its impetus from white missionaries from a neighboring community (Campisi 1985–1987, fieldnotes). The Plymouth Brethren is a Protestant sect that originated in England in 1830, and was led by J.N. Darby. Its chief distinctions are a belief in the strict interpretation of the scriptures, and a belief that both denominations and regular ministries are unnecessary. Every adult male may preach and prophesy (Barton 1967: 94–95).

The Baptist organized their association in January 1881 when representatives of three churches—Burnt Swamp, Magnolia, and Reedy Branch—met at Burnt Swamp Baptist Church, chose officers and approved a constitution and a name: "The Burnt Swamp Missionary Baptist Association of the Mixed Race" (BSBA 1881). The three churches had a total membership of 111 (Ibid.: see table 1). Burnt Swamp was the oldest, having been formed in 1877. In November of 1881, the association held its second meeting and accepted Mt. Pleasant Church as a member (Ibid.). Over the course of the next twenty years the association included a total of eighteen churches. In 1898 there were fifteen churches active in the association. In 1901 Ashpole and Pleasant View were added, While Mt. Elam and Cheerful Hope were dropped because "* * * they have departed from the Baptist Rules of faith and become unorthodox in principle * * * until they reformed" (BSBA 1901: 7; see table 1).

TABLE 1.—LIST OF THE CHURCHES WHO WERE MEMBERS OF THE BURNT SWAMP BAPTIST ASSOCIATION, 1881–1901, SELECTED YEARS

Church	1881	1886	1894	1899	1901
Burnt Swamp	70	61	109	83	91
Magnolia	21	104	93	51	58
Reedy Branch	20	124	98	96	91
Mt. Pleasant	23	45	(1)	(1)	(1)
Bear Swamp	....	47	49	56	54
Deep Branch	....	37	46	51	56
Mt. Olive	....	22	52	68	53
Seven Bridge	....	25	(1)	(1)	(1)
Oak Grove	....	76	92	76	83
Mt. Elam	....	....	43	44	(2)
Harper's Ferry	....	....	....	54	47
Piney Grove	....	....	43	50	51
Mt. Moriah	....	....	....	41	48
Smyrna	....	....	....	32	85
Spring Hill	....	....	....	22	(1)
Piney Hill	....	....	....	20	(1)
Antioch	....	....	....	22	40
Cheerful Hope	....	....	....	12	(2)
Pleasant View	....	....	....	....	37
Ashpole	....	....	....	....	28

[1] Not listed.
[2] Dropped.

Source: Annual Reports Burnt Swamp Baptist Association 1881–1901.

From the association's inception, three themes were continually stressed: the need for religious orthodoxy, the dangers of alcohol, and the need for education. The members of the association reserved the right to review the practices of the member churches, and their ministers, and remove them when necessary. Concerning education the committee report was equally strong in expressing a community value:

> Education implies a drawing out, or shaping, or moulding of the mind. It literally implies a knowledge of books, and how to reduce their contents to practice. Unless we have this knowledge, we are to all intents and purposes helpless.
>
> Viewing the subject of general education, through all the avocations of life we notice that it terminates with success. Education is needed at the bar, in the cornfield, in the domestic business of the household, in conducting the affairs of government, in carrying on the cause of Christ; and, in fact, it is needed in every business avocation of life.
>
> All the real influence that is possessed by the creatures of this world, is possessed by men and women of education. There is no possible chance for us to reach the zenith of our greatness in church matters, nor in our domestic, until we are educated. We, as a bedy of Baptists, need a school organized among us for the benefit of our children. This is the only way our race can be brought from the polluted valley of ignorance to the summit of intelligence.
>
> Education is really necessary on the part of the clergy. Therefore we cannot insist too strongly on Ministerial Education, that the man of God may be thoroughly furnished to every good word and work—a workman that needeth not to be ashamed, but rightly dividing the Word of life, may not only save themselves from the blood of all men, but those that hear them from eternal punishment. We have ministers among us who are deficient in education. What shall we do for them? shall we suffer if we help them? We will not for it is our duty. Let us them by concert of action, and by so doing we will attain to ourselves a more efficient ministry, and the work will redound more fully to God's glory.
>
> Respectfully submitted,
> J.S. Wilkins, E. A. Bell, Committee. (Ibid.: 7)

In line with the above attitude the association urged that its members establish and maintain Sunday Schools and "* * * that parents take their children and enlist them in this great work, and that each church member enlist and attend punctually" (Ibid.). In 1885 the association approved a motion calling upon the member churches to raise funds to establish "* * * a high school among the Croatan Indians * * *" (BSBA 1885:9).

There were other changes occurring in the part of Robeson County occupied by the Lumbees, in addition to the development of schools and churches. Between 1890 and 1900 the town of Pembroke was established at the intersection of two rail lines, the Wilmington, Charlotte and Rutherfordton, running east and west, and

the "Wilson Short Cut" of the Seaboard Coast Line Rail Road, running north and south. The latter line was built in 1892. Up to that time the rail station was located at Moss Neck, which had developed as a small turpentine and trading community just east of present-day Pembroke. In 1895 Pembroke was incorporated (Thomas 1982: 177), and by the following year had a population of fifty (Oxedine 1945: 26). Pembroke quickly became a commercial center.

Summary

At the turn of the century the Lumbees were recognized as an independent Indian community, by the local populations, the state's statutes, and by federal officials. Further, they had established their autonomy over the two principal tribal concerns, education and religion. Beyond these concerns, however, and basic to them, was the universally-held belief that they were a separate people, one that neither sought to be considered white not would accept being categorized as black. They were a people linked together by extended ties of kinship, and although they lived in a number of settlements separated by swamps, they maintained a close and continual contact. It is no coincidence that many of the early schools were built next to the church and cemetery, for these three were the focus of Lumbee life and identity.

The Lumbees had learned to use their voting strength to gain concessions from white politicians. Whites, in turn, had learned that it was less dangerous to accommondate the Lumbees than to anger them. Although Henry Berry Lowrie had passed from the scene some thirty years before, his name was enough to cause concern. For example, the Robesonian, the county newspaper, published a note to the effect that Henry Berry Lowrie had asked a resident of Scotland County to request a pardon for him (Robesonian February 3, 1905: 5). This concern translated into grudging respect for the Lumbees as a separate Indian people, and recognition that they were a cohesive community with leaders capable of marshalling support for issues and candidates. They were also a people capable of direct action when threatened, a lesson not lost upon groups like the Red Shirts and the Ku Klux Klan.

The Twentieth Century

Education continued to dominate Lumbee affairs in the early 1900s. Late in 1899, Congressman John D. Bellamy introduced a bill in Congress to provide educational assistance for the Croatan Indians (U.S. House of Representatives December 13, 1899). On January 31, 1900, Bellamy appeared before the House Committee on Indian Affairs where he described the origins and history of the Croatan Indians. The following day he presented the same remarks to the full House. Bellamy recounted the Lost Colony origin of the tribe, the tribe's history through the antebellum and Civil War period, through the Henry Berry Lowrie years and the founding of the normal school. He praised the tribe's achievements and character, and made a plea for their educational assistance (Bellamy February 2, 1900: 1457–1458). Despite his efforts there is no record of the bill's passage.

Bellamy's support for the tribe highlights an important facet of Robeson County race relations at the time. The years 1898–1900

was a period of intense racial animosity on the part of whites towards blacks. The Democrats, chafing at the continuing hold by blacks and Republicans in local politics, returned to tactics designed to terrorize blacks and dissuades them from political participation. The disenfranchisement of blacks by the use of the Grandfather Clause dates from this period. Bellamy drew a great deal of support from the white supremacists without suffering in the least for his support of the Lumbees. As an example of his acceptance, Bellamy stopped to visit the "White Supremacy Club" of Robeson County while on his way to give the commencement address at the Croatan Normal School (Robesonian June 22, 1900: 3). In general the Red Shirts did not direct their attacks at the Lumbees, considering them distinct from the blacks (Robesonian June 26, 1900: 1). There was at least another reason for white reluctance; the Lumbees had both the inclination and organizational ability to defend themselves from night riders (Campisi fieldnotes 1985–1987).

In the fall of 1905 the tribe made a third effort to secure federal assistance for their school system. October 19, 1905, an "educational rally" was called at the Normal School at Pates. The stated purpose of the rally was to secure "* * * aid from the national government for [the Croatan] schools * * * preliminary to the effort to secure a census of the Indian of this section" (Argus [Lumberton, N.C.] September 22, 1905: 3; Robesonian September 22, 1905: 1). Nothing came of this effort.

In 1907 the normal school trustees found another friend among the whites in the person of Colonel N.A. McLean. McLean was able to increase the normal school's appropriation to $1,250 a year (Robesonian August 6, 1908). The trustees expressed their appreciation for his efforts in a letter to the editor signed by trustee A.N. Locklear (Ibid.).

With no support coming from the state for the development of the campus, the trustees of the normal school had to depend upon the local community. Funds were raised through picnics and rallies. In August, 1907, for example, $800 was subscribed for a new school building (Ibid. August 5, 1907: 5). In 1909 the trustees accepted a suggestion that the school be moved from Pates to Pembroke (Dial and Eliades 1975: 94). They undertook a fundraising campaign that included subscriptions and a rally "at the New College Building." There were to be speakers and music by "the Indian Band" (NCSA November 13, 1909).

The fundraising effort was organized by Oscar Sampson, with the help of D.F. Lowry. Sampson went door-to-door with his campaign raising $500 for land and $600 for a building. This sum was augmented by an appropriation of $3000 from the General Assembly (Barton 1984: 54). Some of the funds were used to purchase a ten acre site in the town of Pembroke (Ibid.). Construction of the main building was commenced in the late spring and completed in time for the fall semester (Robesonian May 13, 1909; May 24, 1909).

The period from 1900 to 1909 was one of a general educational awakening in the state. In the ten year period the county built twenty-five white, nine black, and four Indian schools (Barnes 1931: 72). In 1900 there were 1,680 Indian children of school age in the county, with 867 enrolled and attending an average of 2.3 months per term. By 1910 the number of eligible Indian children

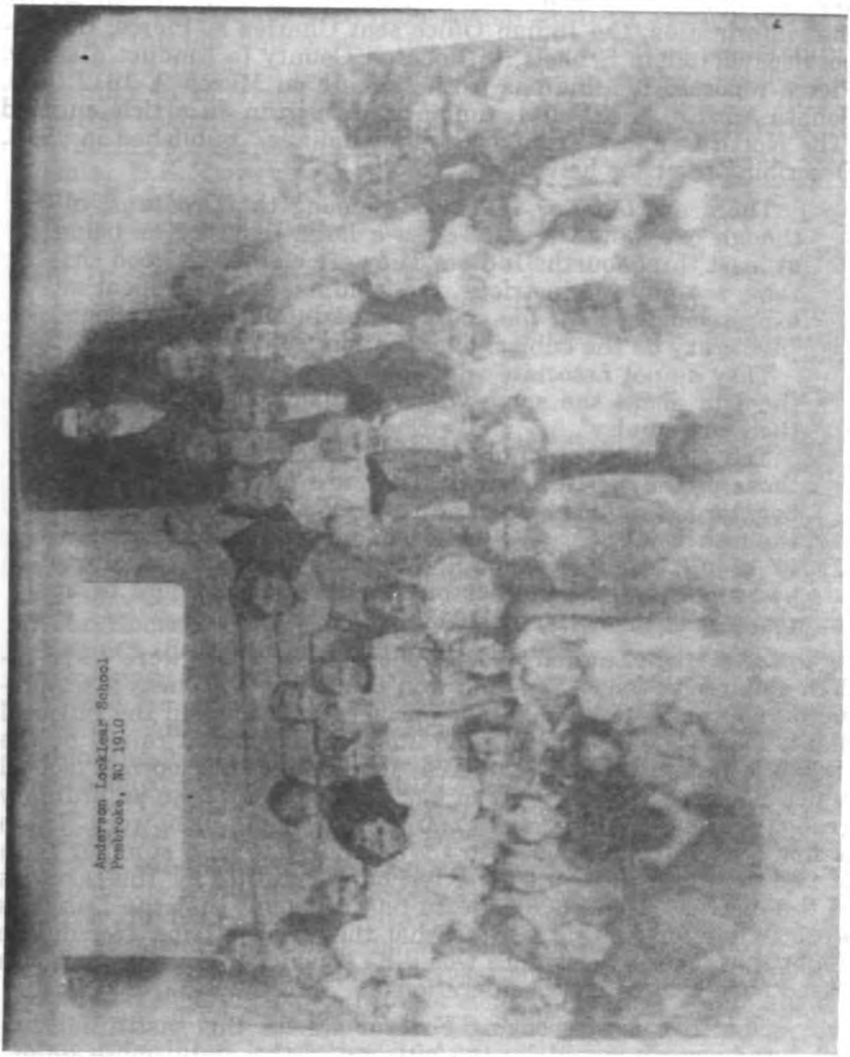
had declined slightly to 1,594, with 936 enrolled. The average term had increased to 4.1 months (Ibid.: 74).

The normal school showed comparable growth. In 1909 it had a total enrollment of 166, sixty-six of whom were taking normal courses. In addition, fourteen of the Indian school teachers were attending the normal school (NCSA May 21, 1909). Clearly, by the close of the decade the normal school had gained broad community acceptance and had stabilized politically by incorporating within its board of trustees representatives of the divers interests within the Lumbee community (see Criteria (b) and (c) for a fuller discussion of this point). When the school relocated in 1909, it did so under the capable leadership of Oscar Sampson, and with the support of the community and the General Assembly.

The name given the Lumbees by the legislature—Croatans—was often shortened by whites to "Cro," and used as a racial pejorative impugning their Indian identity. Consequently, the Lumbees petitioned the legislature for a change in the tribe's name. The legislature accommodated the tribe by changing its name to "Indians of Robeson County" (N.C. Public Laws, March 8, 1911, Chapter 215). The same act changed the name of the normal school to the "Indian Normal School of Robeson County." On the same day, in an unrelated act, the legislature authorized the trustees of the Indian Normal School to deed the school property to the State Board of Education (N.C. Public Laws, March 8, 1911, Chapter 168), which they did two years later (Dial and Eliades 1975: 94).

The name selected by the General Assembly did not please the Lumbees so, in 1913, they petitioned for another name. The General Assembly responded, over the protests of the Eastern Band of Cherokee, by changing their name from the "Indians of Robeson County" to the "Cherokee Indians of Robeson County" and the name of the normal school to the "Cherokee Indian Normal School of Robeson County" (N.C. Public Laws 1913 Chapter 123: 215–216). This name was to remain the school's name for the next twenty-eight years (Dial and Eliades 1975: 94).

The tribe also attempted to get Congress to adopt a name change. In 1910 Representative Godwin introduced legislation to change the name to the "Cherokee Indians;" it did not pass (U.S.H.R. January 29, 1910). The following year Senator Simmons introduced legislation to establish "* * * a school for the Indians of Robeson County, North Carolina (U.S. Senate August 16, 1911). The bill provided for an appropriation of $50,000 for construction and $10,000 for maintenance. Congressman Godwin joined with Senator Simmons in supporting the legislation, and came to speak to the tribe at Reedy Branch (Robesonian September 4, 1911: 5).


Anderson Locklear School
Pembroke, NC 1910

The Senate bill was sent to committee, which apparently requested information from the Department of Interior. To secure that information, the Indian Office sent Charles F. Pierce, the Supervisor of Indian Schools, to Robeson County to conduct a study. Pierce reported his findings to the Senate on March 2, 1912 (U.S. Senate April 4, 1912), and summarized them in an article entitled "The North Carolina Tribe of Croatan Indians," published in 1913. Describing the tribe he wrote:

> There are but few full bloods among the Croatans, although one would readily class a large majority as being at least three-fourths Indian. They are classed as good citizens, are quite industrious, law abiding, and, to repeat an expression used by the county superintendent of schools, "Are crazy on the subject of education.
>
> They do not associate with the Negro race, looking upon them in about the same way as to [sic] do the whites of their community".
>
> The Croatans are find physical specimens; better than those of the western tribes. They are increasing in number, large families being the rule. One Joseph Locklear is the father of twenty-five children, one wife being the mother of all. Another woman, Missouri Locklear, is thirty years old and the mother of twelve children, there being two sets of twins (Pierce 1913: 305).

As to the school situation, Pierce reported that there were 1,976 Indian children of school age, and that the state and county were providing approximately $5,000 for teachers' salaries and the physical plant. This was in addition to an unspecified amount raised by the Indian community (Ibid.). Pierce also visited the normal school which he described as "* * * in fact nothing more than an ordinary graded school, including about two years of high school work. There is however, in connection with the regular course, a summer term of two months run as a sort of teachers' institute for the teachers of the district" (Ibid.: 306). Pierce had no doubt that the Lumbees were Indian, or for that matter, that they were a tribe. Nor did he doubt that federal assistance would be beneficial. His objection was based purely on policy considerations.

> The matter of securing Federal aid for this institution has been discussed by the citizens of the state, more or less, and, while it would no doubt be of much benefit, temporarily at least, at the same time it appears that it would be taking a step backward in our Indian school policy.
>
> At the present time it is the avowed policy of the government to require the states having an Indian population to assume the burden and responsibility for their education, so far as possible. North Carolina, like the state of New York, has a well organized plan for the education of the Indians within her borders, and there does not appear to be any justification for any interference or aid on the part of the government in either case, especially in a prosperous community like Robeson County, North Carolina (Ibid.).

The bill passed the Senate and was sent to the House of Representatives for its consideration (Robesonian April 15, 1912: 1).

Once the bill had passed the Senate, the Indian leadership increased its planning and lobbying efforts. It began by holding mass meetings to rally support (Ibid. May 23, 1912; June 13, 1912). A steering committee was formed to coordinate the tribal efforts, that included representatives from a number of the Lumbee settlements. D.F. Lowry was named chairman. Other members appointed were:

W.F. Sampson (secretary of the committee).
A.N. Locklear.
W.D. Oxendine.
E. Sampson.
J.J. Bell (Lumberton).
James A. Locklear (Lumberton).
C.B. Sampson (Lumberton).
S.A. Hammond (Fairmont).
Irwin Hammond (Fairmont).
Steven Hunt (Hamer, S.C.).
J.O. Brooks (Rowland).
Henderson Lowry (Maxton).
J.W. McGirt (Maxton).
C.F. Lowry (Buie).
(Ibid. June 13, 1912).

The House committee was not scheduled to hold hearings on the bills until the winter of 1913, but as the date approached the steering committee increased its activity. Beginning in January, 1913, it called for meetings to support the legislation (Ibid. January 27, 1913: 1). At the February meeting those in attendance formed a committee to go to Washington to lobby for the bill. The committee was headed by D.F. Lowry (Ibid. February 3, 1913), and consisted of A.B. Locklear, Preston Locklear, A.N. Locklear, James A. Locklear, W.R. Locklear, and B.F. Loud. A.W. NcLean accompanied the committee and presented a statement and historical sketch of the tribe (U.S. House of Representatives February 14, 1913).

After the hearings the house committee decided against passage, the chairman feeling that the eligibility of the Lumbees to attend the federal Indian boarding schools, such as Carlisle, was sufficient, and that the expenditure of some $50,000 for a new regional Indian school was not warranted (Ibid.). Undaunted, Senator Simmons introduced legislation in April, 1913, to change the tribe's name to the Cherokee Indians of Robeson County (Robesonian April 21, 1913: 1), following the similar action by the state (N.C. Public Laws, Chapter 123, March 11, 1913: 215–216). Later the same year Simmons and Godwin reintroduced the bill to provide for an Indian school (Robesonian December 17, 1913: 1).

A tribal delegation consisting of W.R. Locklear, W.M. Lowry, and A. Chavis returned to Congress in 1914 seeking support for their educational system (Robesonian April 30, 1914: 1). On April 28, 1914, the Senate passed Resolution 344, which called for an investigation into the status and conditions of the Indians of Robeson and adjoining counties (U.S. Senate April 28, 1914; Robesonian April 30, 1914: 1). The resolution prompted W.R. Locklear, A. Chavis, and W.M. Lowry to call a mass meeting to discuss the im-

plications (Robesonian May 7, 1914: 3). A second resolution, later that summer, called for an investigation of the Cherokee Indians of Robeson County, perhaps an effort to reflect the name adopted by the state (U.S. Senate June 30, 1914). In response, the Indian Office sent Special Indian Agent O.M. McPherson to Robeson County to conduct the study and to report his findings (Robesonian July 30, 1914: 1).

McPherson visited Robeson County in the summer of 1914, preceding his visit with letters designed to establish contacts and gather information. On his arrival McPherson was greeted at a mass meeting of the tribe called by Stephen A. Hammond, among others (Robesonian July 30, 1914: 5). During the visit the Indian leadership pressed for the right to send their children to the federal Indian schools. This was a particular concern at the time since the normal school did not offer advanced courses and the state schools were not open to Lumbees. McPherson reported that, in fact, the Lumbees were eligible to attend Carlisle, although few could afford to and most would find the federal schools unsuited to their needs (McPherson 1915: 30).

McPherson, writing to Commissioner Sells, gave the following description of his field research.

Lumberton, N.C., August 6, 1914.

Hon. CATO SELLS,
Commissioner of Indian Affairs,
Washington, DC.

MY DEAR MR. SELLS: I have the honor to acknowledge the receipt of your letter of August 4, 1914, concerning my investigation of the condition, tribal rights, etc., of the Indians of Robeson and adjoining counties in North Carolina.

I beg to say in reply that prior to the receipt of your letter I had made arrangements to attend the meeting of the so-called Croatian Indians at Pembroke, on August 11, and had so advised the leading Indians of the band.

On Monday, August 3, I visited the homes of a large number of Indians living southwest of Lumberton in what are known as the Sampson and Hunt settlements. I took notes of their condition and conferred freely with them concerning their history, tribal rights, needs, conditions, and as to what Congress could best do for them. Tuesday, August 4, I conferred with a large number of Indians in Lumberton, along the same lines, who had come in by arrangement to meet me for such a conference. Yesterday I spent the entire day at Pembroke in a similar conference with the Indians of the Pembroke neighborhood, and conferred with a very large number. I had made arrangements to visit the homes of the Indians in the Pembroke district to-day, but had to postpone the trip on account of rainy weather. I shall go to-morrow if the weather permits, and shall spend Monday in a similar visit to a different part of the Indian settlement; and as I have said, I shall attend the Indian meeting at Pembroke on August 11.

I wish to assure you that I am making my investigation as thorough as possible, and shall put forth my best efforts to get at the "bottom facts."

With kindest regards, I am, very sincerely yours,

O.M. McPHERSON,
Special Indian Agent.
(Ibid.: 245–246).

The August 11 meeting referred to by McPherson was called by Stephen A. Hammond, J.A. Hunt, Stephen Hunt, Avener Chavis and Troy Cummings, Committee on Invitation "* * * for the purpose of considering all matters in which the Indians are interested both with reference to schools, the change of name and any other business which may be necessary" (Robesonian July 30, 1914: 5). A second notice, signed by A. Chavis, was published on August 6 (Ibid.: 1). On August 13, the Robesonian ran a short article to the effect that some 3,000 Lumbee Indians had attended the meeting on the 11th, and that A.W. McLean and O.M. McPherson had addressed the gathering (Ibid. August 13, 1914). Another article published on August 20, referring to the meeting on the 11th, provides details as to the organization of the tribe.

Committee on Indians

Committees Appointed by General Committee to Look After Interests of Indians in Various parts of County.

At the mass meeting of Indians held at Pembroke Tuesday of last week a General Committee was appointed to have oversight of the welfare of the Indians of Robeson county. The General Committee has appointed subcommittees as follows:

For the district composed of St. Pauls, Lumberton, Raft Swamp, Saddle Tree, Howellsville and Rennert townships: A. Chavis, E.D. Smith, St. Pauls; Gilbert Locklear, J.E. Dial, J.A. Locklear, J.N. Lowrie, Floyd Locklear, Lumberton; E.M. Clarke, Rennert.

Of this sub-committee J.E. Dial is chairman and E.D. Smith is secretary.

Of that part of the county included in Fairmont, Alfordsville, Rowland, White House, Thompson and Gaddys townships, the following were appointed as members of the general committee: E.J. Hunt, Daniel Locklear, Rowland. Paul J. Chavis, Fairmont, Alfred Hunt, Hamer, S.C.; Stephen Hunt, Rowland; S.B. Hunt, W.M. Locklear, Fairmont; Lonnie Oxendine, Rowland.

Of this sub-committee Stephen Hunt is chairman, and Daniel Locklear is secretary.

Of that part of the county included in Pembroke, Red Springs, Smith's, Back Swamp, Maxton, Alfordsville, and Burnt Swamp townships, and also Hoke county, the following were appointed members of the General committee: Wm. M. Lowerie, James Cummings, Pembroke; S.T. Strickland, Red Springs; Wm. R. Locklear, Pembroke;

> Noah Brewer, Red Springs; E.B. Sampson, Lumberton, Willie Chavis, Maxton; D.W. Locklear, Buie.
>
> Of the above sub-committee Wm. M. Lowerie is chairman and James Cummings is secretary.
>
> J.A. Locklear of Lumberton, was elected chairman of the General committee, and James Cummings secretary (Robesonian August 20, 1914: 3).

The special agent's visit generated a great deal of interest and concern within the Lumbee community, as witness the letters from William Lowry, W.R. Locklear, and A. Chavis (McPherson 1915: 249–250).

McPherson submitted his report on September 19, 1914. The report itself is thirty-one pages long, and includes another 230 pages of exhibits. Most of the report is concerned with a discussion of the origin of the tribe, with McPherson accepting the possibility of the tribe descending from "* * * an amalgamation of the Hatteras Indians with gov. White's lost colony" (Ibid.: 17). He emphatically rejected the argument put forward by A.W. McLean that the tribe was of Cherokee origins, but was willing to accept the possibility "* * * that there was some degree of amalgamation between the Indians residing on the Lumber River and the Cheraws, who were their nearest neighbors" (Ibid.: 23).

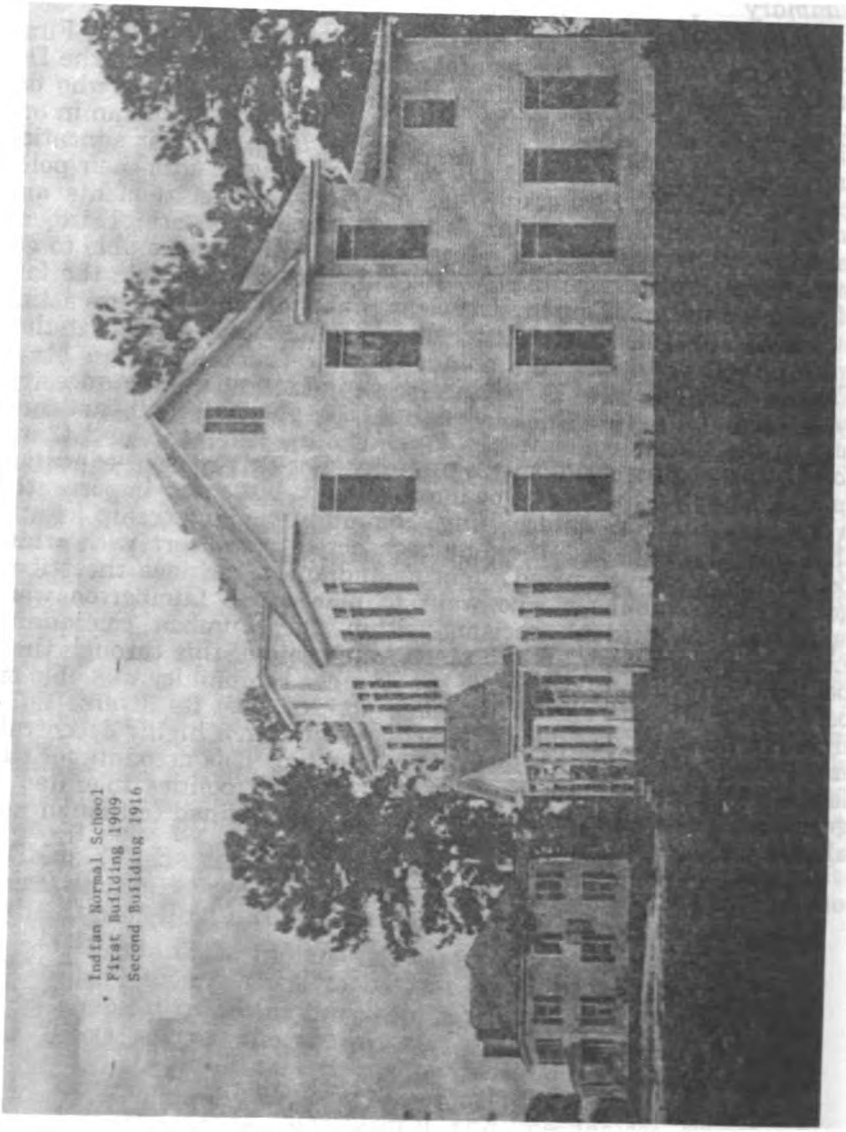
Considering that one of the purposes of the study was to provide information on the educational system of the Lumbees, McPherson devoted little space to this subject, less than three pages in all (Ibid.: 24–26). He finished the report with slightly more than a page of discussion entitled "THEIR NEEDS." In it he said that while there were many viewpoints concerning the best way to help the individual families, there was universal agreement that there was a need for "* * * some higher institution of learning * * *" (Ibid.: 30). He noted that the Lumbees were eligible to attend federal Indian schools, but doubted that these schools would meet their needs (Ibid.). His only recommendation was:

> While these Indians are essentially an agricultural people, I believe them to be as capable of learning the mechanical trades as the average white youth. The foregoing facts suggest the character of the educational institution that should be established for them, in case Congress sees fit to make the necessary appropriation, namely, the establishment of an agricultural and mechanical school, in which domestic science shall also be taught (Ibid.: 31)

From the tribe's perspective the report must have been most disappointing. J.A. Locklear called another meeting of the General Committee for November 27, 1914, presumably to discuss the efforts to get the legislation regarding federal aid to education for the Lumbees and federal approval of the name change (Robesonian November 19, 1914: 4). It is not known when the tribal leaders found out the contents of the report, but it was not submitted to the Senate until January 4, 1915. The efforts to establish the school continued well into the spring of the same year (Robesonian May 20, 1915), but in the end, Congress took no action.

Summary

For the Lumbees these efforts had considerable value. First, there is no doubt that the federal officials in Congress and the Department of Interior recognized the Lumbees as Indians who descended from a limited number of local tribes, mostly Siouan in origin. Second, the efforts of the Lumbees to improve their education and change their name provides important insights into their political organization. Leadership derived from local settlements and coalesced when there was an issue of common concern. Third, on fundamental issues such as education, the leaders were able to get mass turn-outs for meetings, and could sustain interest in the face of repeated failure. Fourth, it is clear that the Lumbees were acting out of a sense of common and shared values that held that they were different from other populations in the county and state. These values included a belief in a common and unique ancestry, an overwhelming sense of belonging to a particular kin network, and through that belonging in a particular settlement, and therefore, being a member of the community. For this reason, education provided not just a means of improvement, but more importantly, a mechanism for determining community membership. Fifth, throughout the period the Lumbees acted in concert with white politicians who recognized them as Indians to achieve the tribe's goals. While Lumbees who went to places like Lumberton were subjected to virulent racism, within the Lumbee community Lumbee leaders were able to ameliorate some of this through their political influence. Sixth, while the Lumbee community was able on occasion to act in concern, Lumbee politics with its diverse pulls from family, religion, and settlement resulted in a highly decentralized and individualistic pattern of leadership. This accounts for the lack of a single political spokesman; Lumbee politics tolerated a good deal of diversity of opinion within well defined (although not always well articulated) limits.



Indian Normal School
First Building 1909
Second Building 1916

Post-War Period

As mentioned earlier, the town of Pembroke had been incorporated in 1895. Within a few years the legislature began altering the political structure of the town, first by changing the terms of office from one year to two, and providing for the appointment of the town marshall by the town council, instead of by popular election (N.C. Private Laws 1905, Ch. 49: 169). In 1917, the legislature took a more drastic step aimed directly at the Lumbees. Acting on a petition from leading white residents, the legislature eliminated the election of all Pembroke town officers, and provided instead, for four commissioners to be chosen by the governor (N.C. Private Laws 1917, Ch. 63: 126–127). Among the four commissioners appointed was W.M. Lowrie (Pembroke Town Minutes May 10, 1917). The change in the system of governance was the direct outcome of the Lumbee population growth within the town limits, which resulted in the political control of the town shifting from whites to Indians. It is another indication of the unique legal and political status of the Lumbee tribe.

During the period of World War I, the tribe took little action to press its objectives in Washington; however with the war's end the leaders renewed their efforts. On March 26, 1913, the state's Attorney General Thomas Bickett had issued an opinion that the county board of education had authority to overrule an Indian school committee's decision to exclude a child because he possessed black ancestry to the fourth degree (Bickett 1915: 129–130). This opinion was in opposition to the finding in the case of McMillan v. Locklear, and thus presented a potential threat to the tribe's autonomy. The state legislature resolved the problem in favor of the tribe by passing legislation that established an Indian school committee with exclusive jurisdiction to hear cases brought by individuals. Any question raised concerning the action of the school committees before the county school board had to be referred by the board to this committee whose decision could be appealed to the superior court only (N.C. Public Laws, 1919 Chapter 211: 416). The law named Ralph Lowery, James B. Oxendine, J.E. Woodell, W.M. Wilkins, and Calvin Locklear to the committee. It effectively set aside the attorney general's opinion.

The tribe continued its struggle to improve its school system and to maintain its autonomy. In 1921 the state legislature approved a bill proposed by L.R. Varser that provided $75,000 for capital improvements at the Cherokee Indian Normal School. Tribal members were troubled by one part of the bill that expanded the power of the State Board of Education to appoint the trustees of the normal school. However, within two years the tribe was able to get this legislation removed. When their good friend A. W. McLean became governor, he supported and signed legislation vesting the power of appointment in the governor (N.C. Public Law 1925, Chapter 306).

FRIENDS — HELPERS

THE school found a friend in the State Senate in the person of Judge L. R. Varser, of Lumberton, N. C., who will be remembered with Hon. Hamilton McMillan as the friends of Indian education. In 1921, under the terms of a bill sponsored by Judge Varser, $75,000 was appropriated for the construction of a new and up-to-date building. Very few people have been known to rejoice as those did when they were able to occupy it for their commencement exercises in the spring of 1923.

In Memory of O. R. Sampson

Of all the friends and helpers of this school, Mr. O. R. Sampson touched it at more points, knew it more intimately, served it longer than any other man has done. He was a trustee for thirty years.

By far the most significant issue for the tribe was the question of federal acceptance of their name. Early in 1921, A.B. Locklear wrote the Department of Interior requesting the status of the Cherokee bill (A.B. Locklear March 9, 1921). Finding that no legislative action had been taken, A.B. Locklear appears to have headed a three year effort to get a new bill introduced. In 1924, the tribute succeeded in getting a bill introduced in the House of Representatives that would have recognized its name as the "Cherokee Indians of Robeson and adjoining counties in North Carolina," and permitted tribal members to attend the federal Indian schools (U.S. House of Representatives March 1924). To help with the drafting of the legislation, Locklear enlisted the assistance of a Washington attorney named Ellwood P. Morey. It is not clear why the provision concerning attendance at Indian schools was included since members of the tribe had previously been admitted. Among those who advised the tribe on the legislation and lent his support was Congressman L.R. Varser (JWBC April 12, 1932, Letter L.R. Varser to J.W. Bailey).

Although the Secretary of the Interior recommended passage of H.R. 8083 (McNickle 1936: 9), Commissioner of Indian Affairs Charles H. Burke opposed the legislation. On December 23, 1924, Senator Simmons wrote to Burke to ask the basis of his opposition. Burke made three arguments: the Robeson County Indians were self-supporting, they no longer lived in a tribal state, and they had never been recognized by the department (JWBC January 2, 1925, Memo C.H. Burke to the Secretary of the Interior). Burke was successful in convincing the secretary to drop his support of the legislation.

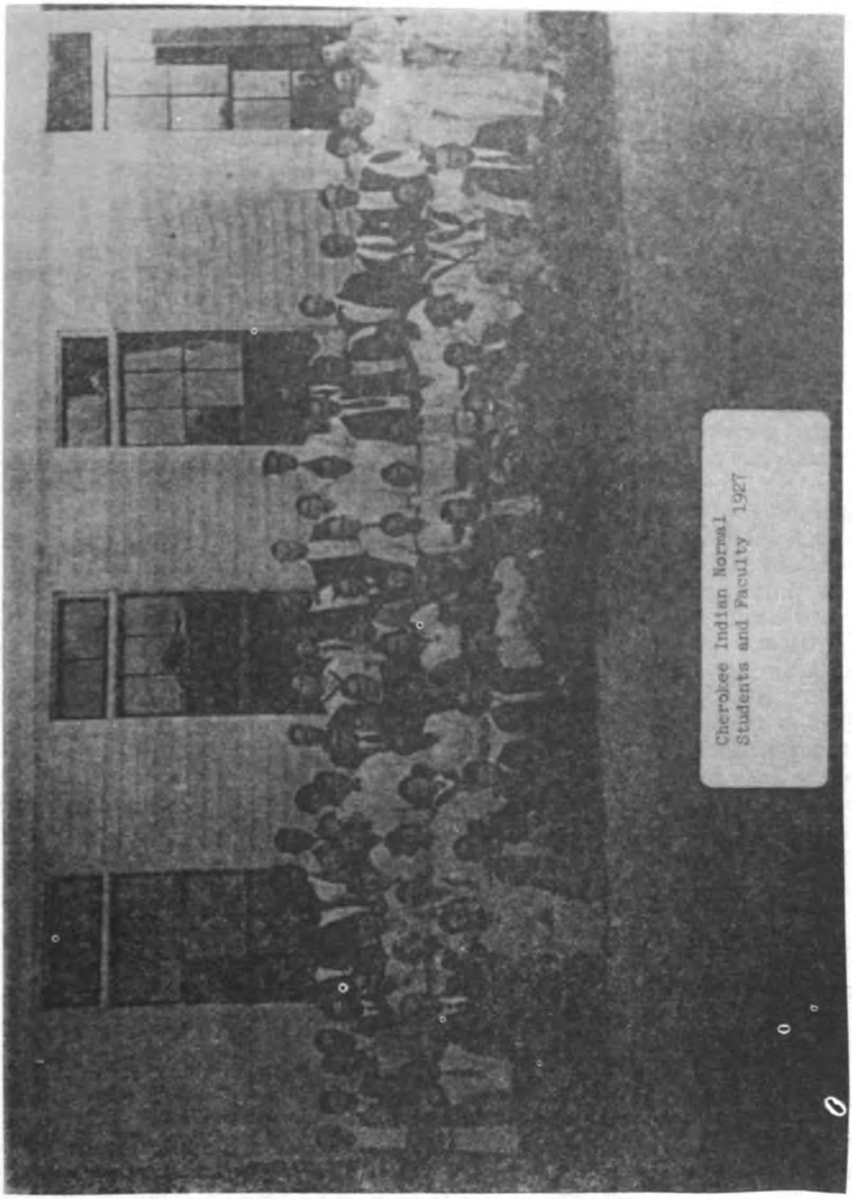
There matters stood until 1932 when a delegation from the tribe, along with their pro bono attorney Ellwood P. Morey met with John Collier, then Executive Secretary of the American Indian Defense Association (Ibid. March 26, 1932, Letter, J. Collier to J.W. Bailey). Collier received a legal brief drafted by Morey, which he transmitted with his recommendation for recognition:

> The chief desire of these Indians appears to be that Congress shall do something which will recognize affirmatively that they are Indians. Being myself from Georgia, I am able to appreciate the desire of these Indians for some status by which they would be, at least in their own thinking, clearly distinguished from negroes
>
> And as a matter of fact, my impression of the group who came here was that they had strong Indian characteristics (Ibid.).

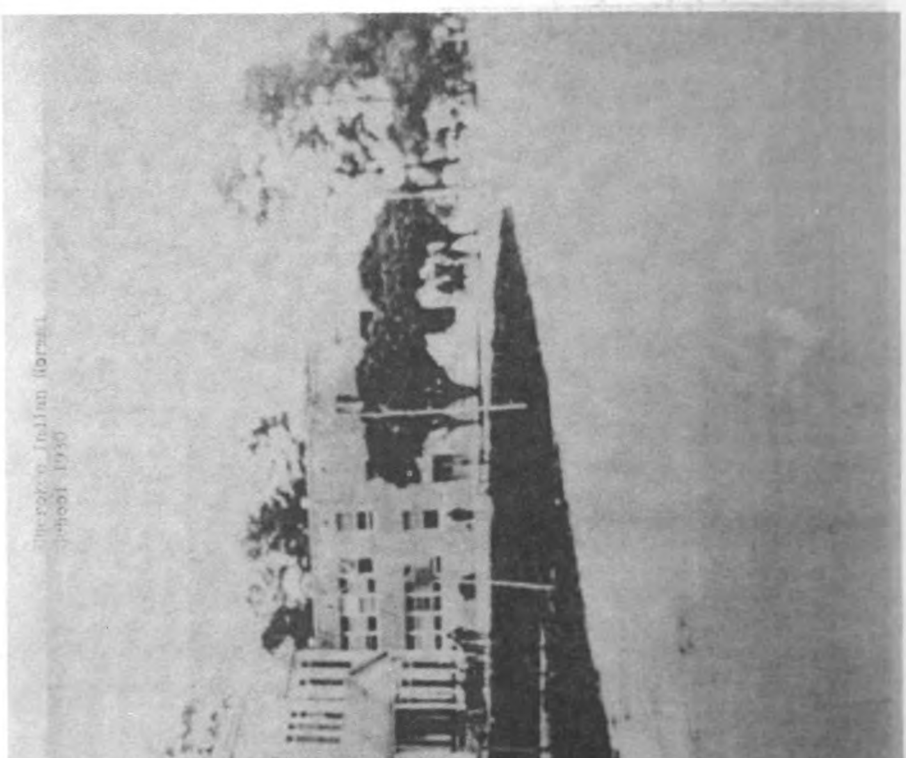
Three days after Collier's letter to Bailey, the senator received a petition signed by 604 tribal members asking him to introduce the "Cherokee bill" prepared by Morey. The group, calling itself the "Southeastern Cherokee Indians of North Carolina," requested that the tribe be designated by that name and that Congress direct that another investigation be conducted to update the 1914 McPherson report. The group's officers were B.G. Graham, president, A.B. Locklear, vice president, F.L. Locklear, secretary-treasurer, and C.B. Brayboy, corresponding-secretary (Ibid. March 29, 1932, Petition to Senator Josiah W. Bailey). A week after receiving the peti-

tion Bailey wrote to Varser asking whether the petition represented the consensus of the tribe, and acknowledging that recognition would be of benefit (Ibid. April 5, 1932, Letter, J.W. Bailey to L.R. Varser). Varser replied:

> I feel that this legislation ought to be acceptable to all the Indians in this county. The State has recognized them as Cherokees and if the federal government will so recognize them, preserving, however, their status as citizens, as they now have it in all respects, I think it will be of considerable value to them. It will make them feel that they have the recognition from both the State and the Federal Government, and ought to inspire a spirit, and ambition, to accomplish the best as citizens. Of course, I know you will see to it that no limitations result to them from this, and the draft that I saw seems to me to take care of this * * *.
>
> I am glad you are interested in their status, for I feel that anything that would tend to give them the proper recognition and to increase their efforts towards education and the acquisition of other qualities of good citizenship will be of value (Ibid. April 12, 1932, Letter, L.R. Varser to J.W. Bailey, April 12, 1932).



Cherokee Indian Normal
Students and Faculty 1927


Indian Normal
1930

Senator Bailey drafted a bill that reflected the objectives of the petitioners, and, as an added precaution, sent a copy to A.B. Locklear for his approval. The bill designated the tribe as "Cherokee Indians," to be recognized and enrolled as such, but specifically denied them any rights or interest in the lands and monies of the Eastern Band of Cherokees or the Western Cherokee tribe (Ibid. April 29, 1932, Letter, J.W. Bailey to A.B. Locklear). Locklear apparently expressed approval because the bill, S. 4595, was introduced on May 9, 1932 (U.S. Senate May 9, 1932).

The bill was referred to committee and from there to the Department of the Interior for comment. Commissioner of Indian Affairs C.J. Rhoads gave an unfavorable report citing James Mooney's assessment that the claim of descent from the lost colony was baseless (JWBC May 24, 1932, Memo, C.J. Rhoads to the Secretary of the Interior). Furthermore, he argued that the United States had not previously recognized the tribe and therefore should take no action on designating it as Cherokee (Ibid.). Rhoads's memo which was transmitted to the Senate on July 12, 1932, was instrumental in killing the bill (Ibid.).

The tribe planned a major effort to get a bill passed by Congress the following year. On January 23, 1933 tribal leaders held a special meeting to discuss strategies (Robesonian January 23, 1933: 5), and in March the petitioners mounted a letter writing campaign urging Senator Bailey to reintroduce the legislation. Typical was the letter written by Britton Locklear: "In regards to our Bill in Congress We the Indians of N.C. refuses to give you our support in the next General Election unless you work in our behalf in regards of our Bill in Congress" (JWBC March 7, 1933, Letter, N.S. Locklear to J.W. Bailey). In a similar vein, but this time offering the carrot rather than the stick, D.J. Brooks wrote, "I haven't voted lately but I will support you if you represent [the] bill we are Cherokee Indians" (Ibid. March 6, 1933, Letter, D.J. Brooks to J.W. Bailey). In all, Bailey received in excess of 100 letters urging his support for the legislation and promising to support him in the next election.

One of the letters was from Joseph Brooks, writing as spokesman for Chief B.G. Graham:

> We have received quite a few letter[s] from you assuring us that you will reintroduce Senate Bill No. S 4595. May I assure you that the Indian People of Roberson [sic] Co. and adjoining counties appreciate the fact, and we will remember it in 1937.
>
> Now Mr. Bailey, I Have not got all the fact[s] yet that I wish to present to the Committee.
>
> However I expect to have all the information in the very Near future. Then I expect to come to Washington with the Same.
>
> May I ask you to wait until then to introduce the Bill (Ibid. March 13, 1933 J. Brooks to J.W. Bailey).

On May 1, 1993, Representative Clark and Senator Bailey introduced companion bills on behalf of the tribe. However, the bills contained one significant difference from the version reviewed by the tribe. Instead of recognizing them as Cherokee, the bill identi-

fied the tribe as the "Cheraw Indians" (U.S. House of Representatives, May 1, 1933; U.S. Senate, 1933). The name change was the result of a report written by the anthropologist John R. Swanton, entitled "Probable Identity of 'Croatan' Indians." Swanton wrote:

> My first encounter with a Robeson County Indian was in the office of Mr. Mooney a few years before his death. He called me in on this occasion, pointed to a tall swarthy individual standing near and asked me if I did not clearly recognize the Indian features.
>
> Recently my interest was reawakened by a delegation sent to me by the Commissioner of Indian Affairs to answer certain questions regarding their history about which he thought I might have information. As their quest fell in line with some researches I had already been engaged upon, I spent a few days looking into the matter. This information seeming to be of interest in certain quarters, I am committing the main facts to paper.
>
> When whites made their appearance on the southeastern coast of the present United States, the piedmont region of Virginia and North Carolina and most of that of South Carolina, was occupied by tribes belonging to the great Siouan family, a great linguistic group named after the wel-known [sic] Sioux or Dakota Indians. In fact, the only exceptions were in the southernmost parts of South Carolina where Muskhogean tribes had intruded and a narrow strip of country along the fall line, between the Nottaway and Neuse Rivers where lived three Iroquoian tribes, the Nottaway, Meherrin, and Tuscarora. Two small tribes on the lower course of Neuse River, the Neusick and Corsa, were also perhaps of Iroquoian lineage, and between Cape Fear River and Winyaw Bay the Siouans had pushed as far as the coast. The rest of the tide water country of North Carolina and Virginia was occupied by Algonquian peoples. In the mountains to the west were the powerful Cherokee, related somewhat remotely to the Iroquois.
>
> "The Siouan Tribes of the East" were the subject of a special bulletin by Mr. Mooney which is the standard work on the subject. One point, however, is not brought out clearly in his treatment, and that is the linguistic differences which existed between the Siouan tribes of Virginia and those of the Carolinas. The tongue or tongues of the former, as shown by the fragmentary evidence which has come down to us, was rather closely related to Dakota, Hidatsa, and other well-known Siouan languages to the northwest. This group comprised the Manhoac, Monacan, Saponi, Tutelo, and Occaneechi. The tribes to the south, however, seem to have been closely connected with the Catawba, and Catawba is the most aberrant of all Siouan languages * * *.
>
> This evidence [referring to a lengthy discussion of the movement of tribes after Spanish contact] shows, therefore, that in the early part of the 18th century a considerable number of small Siouan tribes converged upon the

upper Pedee where they lived for a considerable period, that a part of at least one, the Cheraw, afterwards united with the Catawba, that another, the Eno, probably did the same thing and that the Shakori and Sissiphaw closely related tribes, may have accompanied them. the Keyauwee, however, occupied a village of their own on the Pedee River and no mention is made of any subsequent removal on their part.

On the other hand there are indications that certain of the Indians who had gone to the Catawba subsequently returned. In the course of his investigation above mentioned Mr. McPherson interviewed an old "Croatan" Indian named Wash Lowrie claimed to be almost 80. The old man informed him that "he was told by Aaron Revels, then 100 years old, and Daniel Lowrie, his father, then 73 years old, and Joe Chavis, age 80, that these Indians in Robeson County came from Roanoke in Virginia. That after remaining in Robeson county for some time they went to the mountains with the other Cherokees, but a number returned on account of leaving their relatives in Robeson County, where they had mixed with the other tribes and probably with several of the whites." This statement has been misunderstood on account of an obsession that the Robeson County Indians were Cherokee and confusion between Roanoke River and the City of Roanoke. When we understand the facts regarding Cheraw history, these statements begin to have meaning and the story is consistent. Previous to 1700 they had settled on the Dan River near the southern line of Virginia, and it is to be remembered that the Dan and Staunton unite to form the Roanoke. They moved south about 1710 on account of Iroquois attacks and established themselves on the upper Pedee near the present settlements of the "Croatans", some Occaneechi, Saponi and Tutelo who had been living near the junction of the two rivers perhaps accompanying them. Later we know that some Cheraw moved to the Catawba country and this accounts for the tradition that "they went to the mountain with the other Cherokee." The return of part of them at a later date is not recorded in any history of the section known to me but it is highly probable * * *.

The claim that these Indians were Cherokee is based partly on the assumption that they were descended from Cherokee auxillaries who had accompanied Colonel Barnwell in his campaign against the Tuscarora in 1711–12. Rivers, the South Carolina historian, does indeed, say that there was a body of Cherokee as well as a body of Creeks with Barnwell, but he is wrong, because Barnwell himself, in a letter dated February 4, 1712, gives a detailed statement of all the Indian tribes represented in his army, and this includes a very complete representation from all of the Siouan tribes in the region, besides contingents from the Muskhogean, Apalachee, Yamasee, and Cusabo and from "Hog Logees" (Yuchi). The Yamasee were plainly withdrawn at the end of the contest. Nor are the Cherokee set-

tlers accounted for by the Indian allies of Colonel Moore who headed the second Tuscarora expedition. To be sure he set out with a force of native auxillaries said to number about a thousand (illegible) the taking of Fort No-ho-ru-co all but 180 of these returned to South Carolina and there is no evidence that the 180 remained permanently.

Confusion of these Indians with the Cherokee was probably due in part to the fact that the Cherokee have been their nearest neighbors of consequence for a long period and in part because of the resemblance between the names Cheraw and Cherokee.

Evidence that these people were connected with the Croatan is still less valid. Croatan was the name of an island and an Algonquian Indian town just north of Hatteras, to which the survivors of the Raleigh colony are supposed to have gone since, when White revisited the site of the colony on Roanoke Island in 1590, he found no trace of its except the name "Croatan" carved upon a tree. But, assuming that the colonists did remove to Croatan there is not a bit of reason to suppose that either they or the Croatan Indians ever went farther inland.

The evidence available thus seems to indicate that the Indians of Robeson County who have been called Croatan and Cherokee are descended mainly from certain Siouan tribes of which the most prominent were the Cheraw and Keyauwee, but they probably included as well remnants of the Eno, and Shakori, and very likely some of the coastal groups such as the Waccamaw and Cape Fear. It is not impossible that a few families or small groups of Algonquian or Iroquoian may have cast their lot with this body of people, but contributions from such sources must have been relatively insignificant. Although there is some reason to think that the Keyauwee tribe actually contributed more blood to the Robeson County Indians than any other, their name is widely known, whereas that of the Cheraw has been familiar to historians, geographers, and anthropologists in one form or another since the time of De Soto and has a firm position in the cartography of the region. The Cheraw, too, seem to have taken a leading part in [illegible] the colonists during and immediately after the Yamasee uprising. Therefore, if the name of any tribe is to be used in connection with this body of six or eight thousand people, that of the Cheraw would, in my opinion, by most appropriate (U.S. Senate January 24, 1934: 3–6).


Smithsonian Files

Given the eminent position held by Swanton as a scholar and specialist on southeastern Indians, it is no wonder that the congressman changed the bill to reflect his recommendation.

The Lumbees were not as enthusiastic, and very quickly divided into two opposing groups on the issue of tribal name. Shortly after Swanton's report reached the local press, Joseph Brooks traveled to Washington on behalf of "the Cheraw Tribe," to secure some additional research materials. Apparently James Chavis wrote the Senate Committee questioning the authority of Brooks to represent the tribe. A.A. Grorud, a staff member for the committee, wrote back saying that Brooks has informed him that he was to be in Washington to continue research on the Cheraw. He issued a not too veiled warning that Chavis should abide by the will of the majority," * * * if you do not do this I cannot see much hope for your future welfare." He went on to say:

> Mr. Brooks also tells me that a majority vote of your council decided that one delegate would be sufficient to send to Washington. In this the council acted in my judgment wisely. So long as one delegate honestly represents the council, he is as effective as a large number of delegates. I trust that the council will stand by the majority. However, if a delegate who may be sent to Washington is found not to represent the will of the council he should be repudiated (JWBC July 28, 1933, Letter, A.A. Grorud to J. Chavis).

It is not clear what council Grorud was referring to; it may have been the Siouan Lodge.

The Senate Committee on Indian Affairs held hearings in January the following year, and Joe Brooks and B.G. Graham appeared with Senator Bailey in support of the bill (Charlotte Observer February 4, 1934). Secretary of the Interior Harold L. Ickes recommended that the bill be amended to provide for the recognition of the "Siouan Indians of Lumber River," and further recommended against a federal wardship for the tribe by adding a clause providing "that nothing contained herein shall be construed as conferring Federal wardship or any other governmental rights or benefits upon such Indians" (U.S. Senate January 24, 1934). Ickes went on to warn that

> Should the bill as it now reads be enacted, it is estimated that the eventual charge against the Federal Treasury, to provide school facilities and educate some 2,000 children of school age, would approximate $700,000 the first year, and about $500,000 annually thereafter (Ibid.).

The Senate Committee accepted the changes proposed by Ickes and recommended that the bill be passed (Ibid.).

The Lumbee tribe split sharply over the "Siouan" bill. The Reverend D.F. Lowry and Clifton Oxendine, who had worked since at least 1909 to secure recognition of the tribe as Cherokee, in the face of fierce opposition from the Eastern Band of Cherokee, were taken by surprise when their Cherokee bill of 1932 surfaced first as the "Cheraw" bill, and then as the "Siouan" bill. They immediately set about the task of defeating the bill.

Clifton Oxendine wrote Senator Bailey shortly after the Senate report became available and told him, "The majority of the Indians of Robeson county are absolutely opposed to the passing of such a bill by congress" (JWBC, February 1, 1934, Letter, C. Oxendine to J.W. Bailey). Oxendine challenged the leadership status of Brooks and Graham, claiming they "are not leaders of our race" but are "of that class that believes that the government owes us something" (Ibid). Oxendine reviewed the theory of the origin of the tribe as set forth by McMillan, and supported by former Governor A.W. McLean and Special Indian Agent McPherson. Oxendine called on Senator Bailey to "* * * use your influence in getting others to see and understand that this bill isn't backed by our race as a whole but only by a few who do not know exactly what is best for us" (Ibid.).


Indian Normal
Herbert G. Oxendine
DIPLOMA

Others joined in voicing their opposition, among them T.A. McNeill, a prominent white politician from Lumberton. First he sent a cable to Bailey advising him that the "Robeson County Indian leaders" were opposed to the bill and that a delegation was coming to see him (JWBC, February 11, 1934, Letter, A.W. McNeill to J.W. Bailey). He followed this with a lengthy letter that explained the strong opposition manifested by the Lumbee leadership, one that provides considerable insight into the tribe's politics and values. McNeill wrote:

> A delegation of about thirty of the leading ones of them came down to see me Friday night, and they requested me to advise you that all the leaders of the Indian race in the County are very much opposed to the bill referred to and desire that you use every effort to kill the same.
>
> These leaders, and others among them now dead, have for forty years labored faithfully to get some status for their people, and have succeeded in having the state recognize them in a creditable manner as a race. The state has given them separate schools, separate quarters in penal institutions and in corrective schools belonging to the state, etc.
>
> They have had considerable trouble keeping the mulatto people from adjoining counties, and particularly from South Carolina, from moving into Robeson County and entering their schools under false claim of Indian blood. They have had many law suits about this, and it is now generally understood that none but Robeson County Indians, or Indians of that descent can enter these schools, and they have not had much trouble for the last three or four years.
>
> They feel, and I think rightly so, that this connection with this supposed tribe of Indians (Cheraw) will again open the floodgates to South Carolina and adjoining counties, and their schools will be crowded out and great expense be put upon the state, and innumerable law suits will result. They told me that they were going to send a delegation of three or four to Washington to see you. This delegation was to be selected from those who were in conference with me Friday night, and I advise you that you may rely upon anything they tell you about the situation, for they are from among the real leaders of their race, and are honorable and upright. I unhesitatingly advise that you follow their suggestions to kill this bill. It seems that they have been asleep on the job, and did not know of the petitions circulated among their people in support of this change of name, and they stated to me that most of those who signed from Robeson County are of the uninformed portion of their race, and only a small proportion, as there are from eighteen to twenty thousand of them in this county.
>
> I suggest that you confer with Congressman Clark on this matter. I think he is aware of the facts that those Indians who have been for years engaged in building up their race, and who are the educated ones among them,

> are opposed to this bill (Ibid. February 12, 1934, Letter, A.W. McNeill to J.W. Bailey).

The letter is interesting in that it attributes the opposition to the Siouan name to the problems that the tribe was having, and had been having, keeping the Smilings, a small group that had moved to North Carolina from South Carolina, and others out of its school system. It also demonstrates the polarity that had developed within the tribe. The first group used its contacts with the local political leaders to bring pressure to bear on the congressmen. Although the numbers may well have been inflated, there is no doubt that the tribal leaders' ability to control a large bloc of votes made local white politicians sensitive to the tribe's interests.

Added to those in opposition was another prominent lawyer from Lumberton, E.J. Britt, who wrote to Bailey urging the bill be killed. He, too, had been visited by a delegation of Lumbees the day after McNeill (Ibid. February 12, 1934, Letter, E.J. Britt to J.W. Bailey). Bailey also received a letter from D.F. Lowry informing the senator that the Lumbees who supported the Siouan bill were misled by the opposition and urging the defeat of the legislation (Ibid. February 12, 1934, Letter, D.F. Lowry to Bailey).

During February, both groups visited the senator, pushing their respective positions (Ibid. February 14, 1934, Letter, J.W. Bailey to D.F. Lowry; Robesonian February 15, 1934: 1). In the face of this dissension, Bailey indicated that he would withdraw his support for S. 1632 (JWBC, February 12, 1934, Letter, J.W. Bailey to T.A. McNeill; Ibid. February 14, 1934, Letter, J.W. Bailey to E.J. Britt; Ibid. February 14, 1934, Letter J.W. Bailey to D.F. Lowry). The controversy continued through March, and more letters from both sides were sent to Washington. In late March, delegations from the Brooks-Graham Siouan group and the Lowry-Oxendine Cherokee group met together with the Senate Committee on Indian Affairs for several days to iron out their differences. A.A. Grorud of the committee staff reported on the tenor of the meetings to James E. Chavis, secretary of the Siouan Lodge, the organization formed by Brooks and Graham.

> The delegates representing the Indians of Robeson County, North Carolina, have been here for at least two or three days endeavoring to come to some agreement with reference to the spending legislation with which it is sought to establish a name and designation of the Indians residing in Robeson and adjoining counties. I had the pleasure of meeting all the delegates and members of the tribe while here, also sat in the informal hearing which was held with both Congressman Clark and Governor McLean present. The delegation and people who favor the name "Siouan" claim that at least 90 percent of the Indian population of Robeson and adjoining counties favor the Senate bill. At no time have I heard anyone challenge such statement, therefore it is assumed such a statement is correct. Messrs. Brooks and Graham believe that inasmuch as such a large majority favor such provisions as are in the Senate bill that they are duty bound to stand for the Senate bill and feel that they should not yield to the minority.

> Personally, I have no interest other than to help the Indians but it seems to me that the "Siouan" name is the proper name inasmuch as the experts of the Ethnology Department have found such name to be most suitable.
>
> The delegates held a conference in the Senate Committee on Indian Affairs committee room last evening. The attitude of the delegates who represent the minority, seemed to me, would not yield.
>
> Basing my opinion on the report of Dr. Swanton of the Smithsonian Institute, I would say that the proper designation is that set forth in the Senate bill (Ibid. March 28, 1934, Letter A.A. Grorud to J. Chavis).

The struggle returned to Robeson County as supporters and opponents rallied their forces. The opponents led by D.F. Lowry held a meeting on April 14, at Pembroke (Robesonian April 12, 1934: 1; Robesonian April 16, 1934: 5). Supporters countered with a meeting on April 16, at St. Annah Church just north of Pembroke. The speaker at this meeting was R.T. Bonnin, a Sioux Indian and president of the National Council of Indians, who urged the Lumbees to press the fight for the legislation. The group voted to join the council (Ibid. April 23, 1934: 1, 8).

On May 23, 1934, the House Committee on Indian Affairs reported favorably on the bill (U.S. House of Representatives May 23, 1934), but the action was meaningless; Senator Bailey had withdrawn his support and the bill died in the Senate.

The Wheeler-Howard Act

The defeat of the "Siouan" bill did not bring to an end the efforts by Brooks and his followers to gain recognition. On June 18, 1934, Congress passed the Wheeler-Howard Act, also known as the Indian Reorganization Act, which permitted tribes to reorganize under a federally granted charter. Although Brooks had initially opposed the legislation (JWBC June 10, 1934, Letter J. Brooks to J.W. Bailey), soon after it became law he wrote Commissioner John Collier to find out whether the Lumbees were eligible under its provisions (Ibid. January 28, 1935, Letter, J. Brooks to J. Collier). Collier, in turn, sent a memorandum to Assistant Solicitor Felix Cohen requesting an opinion. Cohen responded:

> Your memorandum of February 18 raises the question, with regard to the Siouan Indians of North Carolina, whether this group can organize under the Wheeler-Howard Act to receive a constitution and charter.
>
> Clearly, this group is not a "recognized Indian tribe now under Federal jurisdiction", within the language of Section 19 of the Wheeler-Howard Act. Neither are the members of this group residents of an Indian reservation (as of June 1, 1934). These Indians, therefore, like many other Eastern groups, can participate in the benefits of the Wheeler-Howard Act only in so far as individual members may be of one-half or more Indian blood. Such members may not only participate in the education benefits under section 11 of the Wheeler-Howard Act and in the Indian preference rights for the Indian Service employment granted by sec-

tion 12 of the Wheeler-Howard Act if the Secretary of the Interior sees fit to establish for these eligible Indians a reservation. Such a reservation might be established either through the outright purchase of land by the Secretary of the Interior, under section 5 of the Wheeler-Howard Act, or by the relinquishment to the United States of land purchased by the Indians themselves, under the same section of the Wheeler-Howard Act, or by a combination of these two methods of acquisition. A reservation having been established, those residing thereon will be entitled to adopt a constitution and bylaws and to receive a charter of incorporation. Under section 19 of the Wheeler-Howard Act the "Indians residing on one reservation" may be recognized as a "tribe" for the purposes of the Wheeler-Howard Act regardless of their previous status.

In order to attain these benefits some such plan as the following would, I think, be necessary: A group of Landless Siouan Indians of one-half blood or more, recommended by the Siouan Council for their agricultural ability and industry, and approved by the Commissioner of Indian Affairs, would purchase a suitable tract of land and surrender title to the United States to be held in trust for the group. The land would, of course, become tax-exempt. The money needed for such purchase might be contributed in part through the generosity of several members of the Siouan Tribe and in part by the Indians who are to benefit from the project. The Indians chosen for the project would then adopt a suitable constitution and bylaws and receive a charter. The group might be designated as the "Siouan Indian Community of Lumber River." It would participate, along with other Indian groups, in the benefits of the Tribal Credit Fund, established under section 10 of the Wheeler-Howard Act. In the case of these Indians the fund could be used to finance the purchase of seed and agricultural machinery and the improvement of the land. Furthermore, cooperative marketing, the establishment of a cooperative store, and possibly a cooperative dairy, might be financed by means of such credits. Such activities would make the project useful, as well as educational, to the entire Siouan Tribe.

Such a project, begun in a fairly small scale, would naturally tend to expand in membership and area if the cooperative endeavors undertaken should prove successful. Provision for the adoption of new members and the acquisition of further lands should be included in the constitution of the group.

In general, I think that some such plan as that above sketched, resting entirely on a voluntary basis and requiring no initial outlay by the United States, would prove suitable for many other nonreservation groups of Indians, and possibly for some reservation groups that are "reservation" in name only (Cohen April 8, 1935).

Cohen's memorandum went well beyond the question asked by Brooks: it outlined an ambitious social and economic plan for the tribe as a model for other tribes.

Upon receipt of Cohen's memorandum, Brooks immediately submitted a proposal that mirrored the recommendations. He proposed that the tribe acquired unimproved land, transfer it to the United States to be held in trust for the tribe, borrow money either from the Public Works Administration or the Tribal Credit fund to improve the land, and place on this land Siouan members of one-half or more Indian blood (JWBC April 11, 1935, Letter, J. Brooks to J. Collier).

Brooks complained of a growing land-loss among the Lumbee in Robeson County, and observed, "what land we still have is nearly all under mortgage which leaves the Indians only one choice to survive, 'the share crop of ⅓ crop system'" (Ibid.). He informed the commissioner that the tribe was prepared to purchase a 1,000 acre tract of unimproved land, but that the tribe would require additional funds to improve the land to make it suitable for individual family farms (Ibid.). The discussions that followed led eventually to the establishment of Pembroke Farms, a 17,000 acre resettlement project for the Indians, the Red Banks Mutual Association, a cooperative of about 15 families leasing 1,700 of the Pembroke Farms' acres, and a prolonged attempt to organize as a tribe under the Wheeler-Howard Act.

After meeting with Brooks on a number of occasions, Collier sent Indian Agent Fred Baker to Robeson County to work out a plan for land resettlement. Baker was in the county from June 16 through June 27, 1935 (Robesonian July 4, 1935: 1), discussing the plans with a wide range of individuals from the tribe (Brooks June 16–27, 1935). He met with 700 Lumbees from the Indian districts of Hollywood, Sycamore Hill, and White Hill at the White Hill Church on June 17. The next day he met with about 1,000 Indians at Piney grove School in Saddletree. Later the same day he met with another 1,500 at Barker Ten Mile School. The third day was spent visiting three tracts of land that might be purchased; on one the Lumbees had constructed a cabin to demonstrate the low cost derived from Indian labor. Thursday morning Baker met with 800 Lumbees from Robeson, Hoke, and Scotland Counties at Cherokee Chapel Church. In the afternoon he met with another large group at Mt. Airy Church in Burnt Swamp Township. On Friday, Baker went to Raleigh, but returned that afternoon and met with about 200 Indians at New Bethel Church. On Saturday he addressed a crowd of 2,000 at St. Annah Church. After the meeting he spent the rest of the day in discussions with the leaders from Pembroke (Ibid.).

Dalzelda Brooks
Son, Colon, Daughters,
Fannie and Rosetta 1930

On Sunday Baker visited resettlement projects for whites and blacks in Elizabethtown, in neighboring Bladen County and on Monday, he looked over more land as possible purchase sites. Tuesday evening he met with about 2,000 Indians at Mt. Airy Church. He ended his visit with a discussion with R.D. Caldwell, Director of Relief. At these meetings the Lumbees expressed their support for the project, which offered them a chance to escape the sharecropping and credit system.

Baker filed his report on July 9, 1935, describing his attendance at seven community meetings where he met with approximately 4,000 Indians (Baker 1935: 1). Based on the numbers given in the log kept by Brooks, it appears that he met with over 8,000 Lumbees (Ibid.). Baker reported:

> It may be said without exaggeration that the plan of the government meets with practically the unanimous support of all of the Indians. I do not recall having heard a dissenting voice. They seemed to regard the advent of the United States government into their affairs as the dawn of a new day; a new hope and a new vision. They hailed with joy the offer of the government; many of the old people could not restrain their feelings,—tears filled many eyes and flowed down furrowed cheeks. We must confess to the fact that our own feelings were deeply touched as the old people expressed so deep a longing to have a piece of land on which they could live in peace without fear of ejectment by a landlord (Ibid.).

Baker went on to remark upon the tribal cohesion and solidarity that was maintained and increasingly expressed among the Indian people of Robeson. Despite the deplorable conditions of the sharecropping families, Baker noted:

> I find that the sense of racial solidarity is growing stronger and that the members of this tribe are cooperating more and more with each other with the object in view of promoting the mutual benefit of all the members. It is clear to my mind that sooner or later government action will have to be taken in the name of justice and humanity to aid them (Ibid.: 3).

Baker found no opposition to the proposed project from the white landlords, who he said were willing to sell their land at a fair price. Baker concluded his report with a recommendation that the project be supported.

In the fall of 1935, Brooks sent Collier an agreement to take property (September 9, 1935, Letter, Joseph Brooks to John Collier). On September 12, 1935 Brooks was interviewed by John Pearmain in Washington on a variety of subjects, including the organization of the Siouan tribe. Brooks reported that there were ten Siouan communities centered around Pembroke, each with at least one Indian public school. The tribal council consisted of eighteen elected representatives, each from a separate electoral district. In addition, there was an eighteen member advisory council called the Tribal Business Committee. The tribe had no written constitution. Brooks reported the total number of Siouans in Robeson County to

be 11,000, with anther 2,000 resident elsewhere (Pearmin 1935: 41).

The years of Service [illegible] seventy years ago when we [illegible]

1887 1937

Fifty Years of Service

Cherokee Indian Normal School

Pembroke, North Carolina

SEMI-CENTENNIAL OBSERVANCE

Friday, June 4th, 1937

Tracing the History of Indian Education in Robeson County, Reminding Ourselves of the Mental and Moral Qualifications of Teachers, and Planning for the Future.

SPEAKERS:

Judge L. R. Varser, *Presiding*
Rev. D. F. Lowry
Rev. S. A. [illegible]
Dean J. R. Lowry
Rev. L. W. Jacobs
Dr. James E. [illegible], *Superintendent*
Hon. Clyde A. Erwin, *State Superintendent*
Presentation of Memorials

GRATEFUL acknowledgment is hereby made and sincere appreciation is now expressed for all — whosoever and wheresoever — living or dead who have contributed to the [illegible] and the upbuilding of this school by their [illegible] effort.

Pearmain conducted an independent survey at which time he interviewed 44 tribal members. He reported that there were seventeen Indian communities in Robeson County. In his preface he spoke most favorably of the project and its leadership saying "With his [Brooks] leadership and the backing of the various members of the Tribal Council, together with the favorable local sentiment for the project, the undertaking should be a success" (Ibid.: 1).

The project seemed well on its way to fruition when it was suddenly shifted from the Bureau of Indian affairs to the Rural Resettlement Administration of the Department of Agriculture. No satisfactory explanation of the change was provided. Following this move came the appointment of an employee of McNair Investments of Laurinburg to serve as federal civil service manager for the project. Brooks and the other leaders were particularly incensed by this action since McNair was one of the principal reasons for the massive Indian land loss through foreclosures in Robeson County (July 6, 1936, Letter Groome to Stewart).

Up to this point there had been no opposition from the white population, but this changed in 1938. In February, Senator Bailey and Representative J. Bayard Clark received a petition signed by the white members of the Mount Moriah Church, located near Pembroke Farms, complaining in the baldest racial terms of the placement of Indian families near their church. The thrust of their complaint was that the 125 year old church and cemetery were about to be abandoned by its members because of the settlement of Indian families in the area (Petition 1938). Bailey and Clark transmitted the petition to the Farm Securities Administration, endorsing its insistence that Pembroke Farms be opened to settlement by whites, and the Indian families be barred from tracts near the church (Ibid.).

The controversy over whether whites could occupy the land continued for several months and was finally resolved by a compromise that allowed the tracts adjacent to the church to be leased to whites. In addition, a grove of trees was to be preserved to screen off the Indian settlements (May 20, 1938, Letter, Alexander to Mitchell).

AND NOW 1937

MAIN BUILDING—CHEROKEE INDIAN NORMAL SCHOOL

CAPITAL ASSETS SHOWN IN AUDIT AS OF JUNE 30, 1936

Land: 35 Acres	$ 14,837.50
Buildings, Etc.	$121,310.98
Grading, Drainage, and Ground Work	$ 1,561.15
Equipement	$ 45,813.33
TOTAL Capital Assets	$183,522.96

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During the efforts to establish Pembroke Farms and the Red Banks Association, Brooks was also busy with his efforts to have the Siouan tribe federally recognized under the "one-half or more Indian blood," provision of the Wheeler-Howard Act (Section 19). Following his receipt of Cohen's memorandum, Brooks sought and received confirmation from the Secretary of Interior (McNickle 1936: 13). On June 11, 1935 Assistant Commissioner of Indian Affairs William Zimmerman wrote Brooks requesting " a list of members of the [Siouan] group who are one-half or more degree Indian blood" as well as information as to how this quantum could be established (June 11, 1993, Letter, Zimmerman to Brooks). A month later the Siouan Council submitted its approved roll (Ibid.).

Duncan Locklear
Seltzer Photo 1936

Henry Locklear
Seltzer Photo 1936

Jimmy Locklear
Seltzer Photo 1936

Willie Jones
Seltzer Photo 1936

Bedan Brooks
Seltzer Photo 1936

Annie Locklear Jacobs
Seltzer Photo 1936

Jessie Oxendine
Seltzer Photo 1936

Dunnehugh Wilkins
Seltzer Photo 1936

Lucy Ruby Jacobs
Seltzer Photo 1936

Jesse Brooks
Seltzer Photo 1936

73-119 O - 93 - 5

Allie Byrd Hammonds

Seltzer Photo 1936

Mareller Wilkins
Seltzer Photo 1936

TABLE 2.—ENROLLMENT OF SIOUAN INDIANS OF THE LUMBER RIVER

District	Heads/households	Councilman
1. Piney Grove	7	T.H. Locklear.
2. St. Annah	81	A.C. Locklear.
3. New Bethel	36	A.A. Oxendine.
4. Deep Branch	18	J.T. Hunt.
5. Leland Grove	22	Johnie Cummings.
6. Macedonia	7	Arch Locklear.
7. Prospect	45	Shelton Bullard.
8. Barker Ten Mile	33	Henry McGirt.
9. Sycamore Hill	23	Charlie Locklear.
10. Mt. Elam	54	Charlie Oxendine.
11. Burnt Swamp	85	Cloyd Chavis.
12. Bethel Hill	47	D.L. Lowery.
13. White Hill	80	Josiah Locklear.
14. Saddletree	90	Riley Locklear.
15. Philadelphus	62	Hezzie Deese.
16. Cherokee Chapel	36	Elwood Oxendine.
17. Holley Wood	6	Hector Locklear.
18. Smyrna	35	Eddie Locklear.

(Siouan Tribal Council 1935)

The enrollment list, which was dated May 18, 1935, listed eighteen districts with the number of heads of households and the names of the tribal councilmen in each district. The Piney Grove district had a total of fifty-nine members, or just over eight per family. The roll lists 767 families, which would suggest a total enrollment of around 6,000, out of a total Indian population of 12,404 (U.S. Department of Commerce 1937: 21,175).

After some discussion with Assistant Commissioner Zimmerman, the Siouan Council accepted, in June of 1935, with slight modification, the blood-quantum form devised by the Bureau of Indian Affairs (June 3, 1935, Letter Zimmerman to Brooks). There remained a serious problem of the criteria to be used in determining blood-quantum, as well as the procedure for validating the applicants. Assistant Solicitor Cohen addressed these questions in a memorandum in April, 1936.

> On the basis of Mr. McNickle's report dated April 7, it seems to me quite feasible and entirely desirable to prepare a list of those Indians who can fairly establish that they are of more than one-half Indian blood. The stringency of proof to be required is largely a question of administrative policy that should be determined by the Commissioner. One of the factors to be borne in mind is the scale on which this project is to be attempted.
>
> I should think that Mr. McNickle's estimate that of the 12,404 listed in the census of 1930 there ought to be at least several hundred entitled to recognition as of one half or more Indian blood is probably quite conservative.
>
> With respect to the type of evidence on blood that we are to require, I do not think the choice is necessarily, as Mr. McNickle suggests, between depending "entirely on tradition" and undertaking "a long and tedious procedure of tracing each applicant back through state and county records." I think that we have to rely not only on oral evi-

> dence, but also on evidence from enrollment in Indian schools and other special Indian institutions maintained by the state.
>
> I agree with Mr. McNickle that the best way of sifting such evidence is through a commission which would sit continuously for a stated period to hear applicants and witnesses under oath. It would be an excellent idea, I think, to have one or more Indians sitting on this commission and to utilize a special jury of local Indians to decide disputed questions of fact which might be presented by the commission. Such a special jury might be selected by the existing council.
>
> My own feeling is that such a commission should not attempt the task of preparing an exhaustive roll but should pass only on the cases of persons applying for land or educational privileges under the Indian Reorganization Act that the group selected for occupancy of land to be acquired should serve as a nucleus which could make additions from time to time to its own body, with the approval of the secretary if that approval be considered necessary but upon the basis of its own independent investigations. Of course the critical point in this program is the selection of the original nucleus group (Cohen April 8, 1936).

Cohen's memorandum makes clear three important points: (1) acceptable evidence will consist of oral statements, school records, and other state documents, (2) the final determination of facts where disputes exist will be made by a jury of tribal members, and (3) the records to be reviewed will be limited to those persons who are applying for federal Indian assistance. In addition, the core of people will represent a nucleus group for the purposes of recognition and will be able to admit others who meet the criteria.

The Bureau had never faced the problem of determining blood quantum for such a large group in the absence of a solid base of tribal records. Consequently, several methodologies were considered before the final plan was accepted. This plan combined tribal and family tradition with documentary research. One additional criterion was included; the use of anthropometric data. In June of 1936, Dr. Carl C. Seltzer, an anthropologist and member of the "Eastern Siouan Indian Commission," visited Robeson County and took physical data on 108 Indians applying for recognition as one-half or more Indian blood. He took data concerning skin pigmentation, hair, ears, eyes, nose, lips, teeth, and head, as well as blood type and general body measurements, in accordance with "the International Agreement and as recorded by Dr. Ales Hrdlicka in his "Anthropometry" published in 1920" (Seltzer July 30, 1936).

For each applicant Dr. Seltzer prepared a "Racial Diagnoses," with the following categories: one-half or more Indian blood, borderline; probably more than one-half Indian blood; probably less than one-half Indian blood; more than one-half Indian blood; less than one-half Indian blood; and doubtful (Ibid.). Of the 108 applicants, only three—Lawrence Maynor, Vestia Locklear, and Jesse Brooks—were diagnosed as one-half or more Indian blood (Ibid.). Table 3 summarizes Seltzer's findings according to category.

TABLE 3.—RESULTS OF DR. SELTZER'S STUDY OF 108 INDIANS

Category	Number of applicants
Borderline	2
Probably < ½	4
Probably > ½	1
Less than ½	97
½ or More	3
Doubtful	1
Total	108

At a later date Seltzer returned to Robeson County and examined another 101 applicants. Of the 209 applicants, the Secretary of Interior eventually certified twenty-two as having one-half or more Indian blood (February 24, 1938, Letter to Brooks; December 12, 1938, Letter, Zimmerman to Brooks).

What had started out as a reasonable plan of Cohen's quickly became a ludicrous exercise in pseudo-science. The disreputable anthropometric data were without merit and meaningless. (In accepting these as the principal determinants, the federal government ignored the more than 150 years of endogamous marriage in the coummunity.) If twenty-two met the criteria, surely so would their siblings, and for that matter, most of the rest of their families. Yet there were instances where one sibling appeared on the accepted list while another was rejected. How Cohen's proposal could have been so corrupted, and in such a short length of time, is beyond comprehension.

Despite the failure of the recognition process and the less than satisfactory establishment of Pembroke Farms and the Red Banks Mutual Association, the decade ended with some positive results for the tribe. The federal government repeatedly acknowledged the Indian ancestry of the Lumbee. Throughout the period it continually referred to the tribe as Siouan, to the displeasure of some important tribal leaders, but to the satisfaction of others. Furthermore, through its actions it acknowledged the existence of a tribal structure with whom it negotiated and communicated on a regular basis. The Siouan Tribal Council and their opposing group—those who sought the Cherokee name—ably demonstrated their ability to marshall large numbers of tribal members to support their respective positions. Both were able to bring their influence to bear on the national government, although in different ways. The Siouan group operated most successfully when dealing with the Bureau of Indian Affairs, while the Cherokee group showed more influence with local white politicians and congressmen. It is ironic that in order to prevent their being named Siouan the opponents had to sacrifice the opportunity to receive federal approval of the Cherokee name.

Although there was a sharp split between the Siouan and Cherokee segments of the tribe, it is incorrect to assume from this that the two sets of leaders did not share similar aims for the tribe or were unwilling to cooperate for common goals. One example of this was the Indian Pageant, organized and staged in 1940 and 1941, and sponsored initially by the Red Banks Mutual Association. Inspired by the success of the 1936 "Lost Colony" outdoor drama at Manteo by Paul Green, community leaders contacted the Bureau

seeking assistance in staging a similar drama in Pembroke. Walter Smith, Joe Brooks, D.F. Lowry, W.R. Maynor, C.E. Locklear, S.A. Hammonds, and C.D. Brewington worked through George Mitchell in Washington to have the Bureau hire Ella Deloria as an "Indian specialist in cultural history" to work with the Indian committee in Pembroke to put on an agricultural fair and pageant to celebrate "the history and progress of the Indian people around Pembroke" (July 15, 1940, Letter, Mitchell to Smith). Apparently the leadership went directly to Collier who coordinated the project through Mitchell's office.

The Office of Indian Affairs arranged for $1,200 to hire a person for five months to perform the following duties:

> The person chosen is to be assigned duties as advisor to committees of citizens, principally Indians, in their plans to develop a Pembroke Indian Fair which it is hoped it will be possible for them to hold in late November, 1940. The individual should have some special abilities in the field of Indian cultural history, the public presentation of historical and folk material, preferably some knowledge of agriculture, and in addition should be familiar with Indian sports and pastimes (Ibid. July 11, 1940, Letter, Mitchell to Collier).

The letter went on to note that the Farm Securities Administration, which was ultimately funding the project, felt that the tribe's sense of "* * * cultural and racial pride * * *" would be enhanced by the project.

The Indian Office hired Ella Deloria, a Dakota Indian who had worked as an anthropologist at Columbia University with Dr. Franz Boas for eleven years. Her contract ran from the middle of July to the end of November, 1940 (July 11, 1940, Letter, Mitchell to Gordon). Deloria began her work immediately and by August had sketched out her ideas for an Indian Pageant. Her first item of business, a trip to see the "Lost Colony" pageant, met with a cool reception. The Siouan group disavowed descent from the Algonkian tribes of the coast, and those who believed in the Lost Colony origins were afraid to assert their beliefs out of fear of being ridiculed by doubters and of reviving the loathed "Croatan" slur (August 21, 1940, Letter, Deloria to Faris). She had also been warned against relying on the Lost Colony legend by the North Carolina historian Dr. Crittenden (Ibid.). Nevertheless, she decided to see the drama, if only to understand its technical aspects.

Deloria's idea for the pageant was to show the evolution of the tribe from white contact to the present, highlighting the change from confrontation, to mutual assistance between the races. She planned to mix the general history of Indian-white relations with specific points of Lumbee history, such as the original settlement of Indians in Robeson County, subscription schools, military service, the Lowry War, and ending with the assistance given by the Farm Security Administration (Ibid.).

The project was a massive undertaking involving all segments of the Indian community in prop construction, music and choreography, costuming, lighting, advertising, fundraising, and the like. Indian school teachers rehearsed their classes for "mass effects or

choruses of movement of song," and the people generally were very enthusiastic (Ibid.). Between August and October 1940, the community was fully engaged in preparations for the pageant. The script was completed by late October, and rehearsals started almost immediately at the newly constructed college gym. Deloria reported:

> Some white women from Red Springs asked to be in it [the pageant] but the people feel it is their pageant, their first chance to do something interesting and that they have enough blonds to play white parts. (When white men stage a show calling for Indians, they don't go out after real Indians; they make up as Indians; why can't we [make up as white]? said one man) (October 22, 1940, Letter, Deloria to Mitchell).

The Indians of Robeson County

Present

"The Life-Story of a People"

A pageant showing the development of the Indians of Robeson County from earliest times until now. Produced under the sponsorship of the State Indian Normal College and the kindly auspices of the National Farm Security Administration and the Office of Indian Affairs, Washington, D. C.

Written and directed by
ELLA CARA DELORIA

College Gymnasium
PEMBROKE, North Carolina

DECEMBER 5, 6, 7, 1940
at 8 o'clock. P. M.

Outline Of Pageant

PART I

A Symbolical Prelude: The Last Indian Questor.

PART II

"The Life-Story of a People": From a Modern Questor's Notebook

Episode one Aboriginal Life (A conjectured scene)

1. Primitive Religion
2. Primitive Sorrow
3. Primitive Hospitality.

Episode two Life along the "Lumbee"

1. Pioneer Church—The Circuit Rider
2. Pioneer Education—The Subscription School
3. Pioneer Justice—Me-mekie and the Outlaws.

Episode three Progress since 1885.

1. The Church of today.
2. Education of today.
3. Glimpses of the present scene.
   a. Pembroke College.
   b. Public Health Program.
   c. The Boy Scouts; the Girl Scouts.
   d. Indians in National Defense.
4. Earth's Rewards—A Tableau and Dance.

PART III.

Finale—The Indian Expresses Loyalty—

1. To his Home.
2. To His Country.
3. To His God.

Cast

LAST INDIAN QUESTOR: Paul Sampson; Joseph Sampson, (alternating).

MOTHER EARTH, in the Vision: Bertie Thomas Revels

THE FOUR WINDS: Mabel Lowry, Anna Oxendine, Lucy Locklear, Tessie Hunt

INTERPRETING CHORUS: Reba Lowry, Frances Stinebring, Fossie Maynor, Mary Sharpe, Elizabeth Maynor, Mary Jacobs, Lucy Chavis, Alyce Maynor.

CIVIL CHIEF: Roy Maynor — TRIBAL QUEEN: Ruby Dia[illegible]

HIS ATTENDANT: John Lowry

BATTLE COURIER: Tommy Oxendine.

WAR CHIEF'S ATTENDANT: Earl Oxendine

CORN RITUAL DANCERS: Wilma Sampson, Martha Sampson, Ines Thompson, Lillian Thompson, Maud Wilkins, Georgia Locklear, Margaret Locklear, Parree Chavis

BOY SINGERS FOR CORN DANCE.

GIRL SINGERS FOR CORN DANCE.

WHITE REFUGEES: Joe Smith, Anna Cummings, Eulalia Lowry, Annie Neal Locklear, and others.

MODERN QUESTOR: Ledger Locklear

CIRCUIT RIDER: Anson Locklear.

CHAIRMAN OF SCHOOL MEETING: James Albert Sampson.

ME-MEKIE: Earl Lowry

VOICE IN THE DARK: Marvin Hewington.

THE LOWRY GANG: Joe Sampson, Ira Pate Lowry, Carlee Lowry, Burney Locklear, Plummer Locklear, Gaston Revels, James Albert Sampson, Elmer Lowry, Theodore Maynor, Delton Lowry, Ernest Sampson

MOTHERS: Rose Carter; Lucy Locklear

DAUGHTERS: Cynthia Brooks, Ruth Sampson

BOY SCOUT LEADER: Walter Pinchbeck, Neighborhood Commissioner

GIRL SCOUT LEADER: Lola Sampson, Fossie Maynor, assistant

NATIONAL DEFENSE: Russell Oxendine, John H. Lowry.

INDIAN FAMILY: Anson Locklear, Evelyn Stone, Sammy Locklear, Louise Carter.

PUBLIC HEALTH NURSE: Velma Maynor, R. N.

INDIAN FARMER: Richard Jones

COTTON DANCERS: Anna Victoria Smith, Alyce Maynor, Martha Sampson, Wilma Sampson, Parree Chavis, Margaret Locklear, Georgia Locklear, Reba Chavis, Anna Oxendine, Lucy Locklear, Mary Wilkins, Maud Wilkins, Lillian Thompson, Ines Thompson, Clellet Godwin, Ella Jones

Pageant OF THE ROBESON COUNTY INDIANS

"PAGEANT SHOWING THE DEVELOPMENT OF THE INDIANS OF ROBESON COUNTY FROM EARLIEST TIMES TILL NOW. [illegible] STAGED AND ENACTED BY PERSONS OF INDIAN ORIGIN"

PEMBROKE, *North Carolina*

COMMITTEES

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JOHN J. BROOKS
IRA PATE LOWRY
MRS IRA PATE LOWRY
W. R. LOCKLEAR
MRS. W R LOCKLEAR
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LACY MAYNOR
THEODORE MAYNOR
JAMES A JACOBS
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REV D. F LOWRY
REV L. W JACOBS
J A. SAMPSON
LEVI HUNT

MISS ELLA DELORIA, EX-OFFICIO, ALL COMMITTEES

Dear Friend:-

We, the Indians of Robeson County, are giving a pageant on December 5, 6, 7, which will present the development of our people and their achievements from earliest times until now. It will have an all-Indian cast, and will open with some very striking, authentic cermonials of the pre-Columbian Indians who were our ancestors, and will give the highlights of our history as derived from both tradition and written record.

It bids fair to be good entertainment as well as informational. It will present a complete picture of a unique group of Indians; for we are unique in many respects, particularly in this: What we have attained has come not through idle waiting for possible Federal help, but through industry and sobriety and a consistent determination to survive. Furthermore, although we have always paid taxes and carried our share of civic and national duty, we obtained our public school system only fifty-four years ago. Yet in that short period, our people have made remarkable progress, as the closing scenes will show.

The pageant theme is based on this obvious truth: That those people who live in close partnership with God's earth, and in a harmonious relation with Nature, find for themselves a way-of-life that is satisfying to the spirit. Our people have done this and have learned thereby to live in serenity and simplicity; loyal to the land of their birth and to its government, and true to the God who made them.

The production is in the capable hands of one who has had considerable experience with Indian pageantry, as an avocation. The fact that her major interest is Anthropology only gives added assurance that the Indian scenes will be racially and regionally correct. Because we feel we have something that serious-minded citizens would appreciate, we are sending you this word with the hope that you will see fit to pass it on to such of your friends and acquaintances as you feel might be interested.

Sincerely yours,

THE PUBLICITY COMMITTEE

Per ....

PROGRAM

Second Annual Presentation Of

"The Life Story Of A People"

SPONSORED BY

PEMBROKE STATE COLLEGE

FOR INDIANS

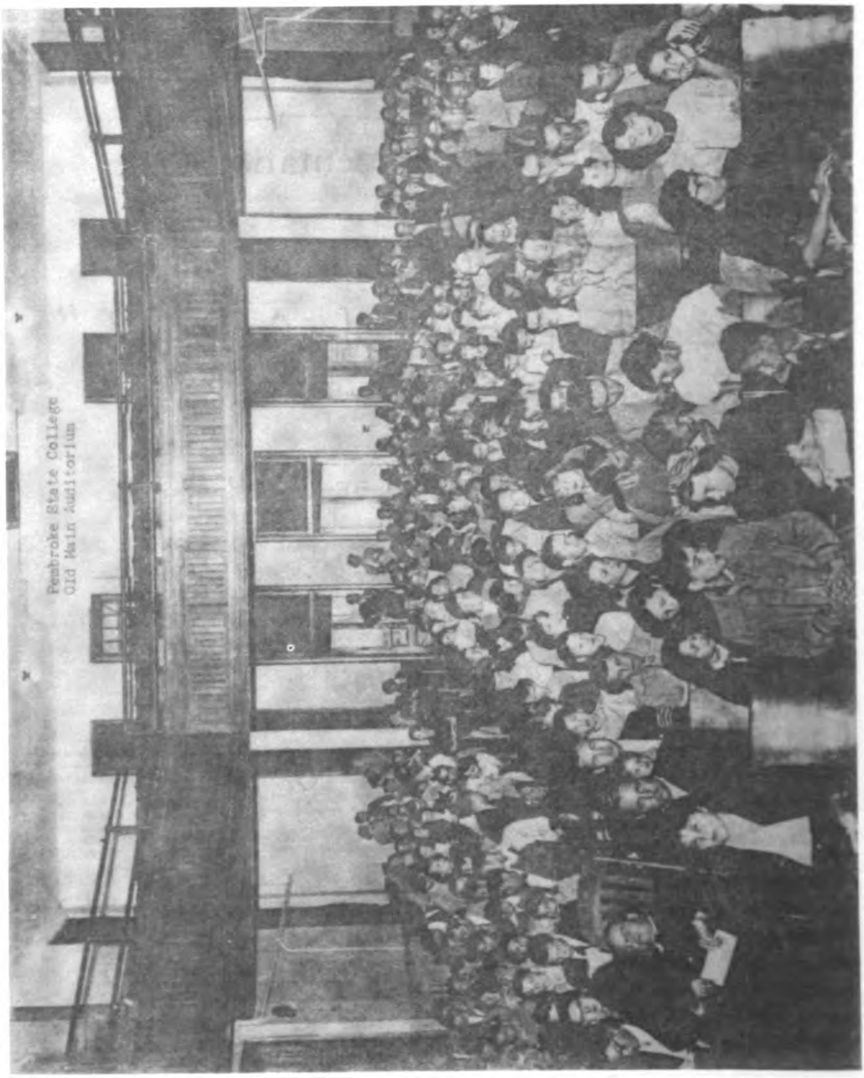
December 5, 8 and 10, 1941

At 8 P. M.

College Gymnasium

PEMBROKE, N. C.

Written and Directed by
MISS ELLA C. DELORIA


Pembroke State College
Old Main Auditorium

The pageant, entitled "The Life Story of a People," was presented on three successive nights, December 5, 6, and 7, 1940 (Robesonian December 3, 1940). It attracted much local and statewide attention, and was well supported by local businesses (Lumberton Voice November 30, 1940: 1–5; Raleigh News and Observer November 28, 1940; Robesonian December 6, 1940). George Mitchell wrote:

> It was a grand job. Everyone is agreed that the whole business did more to draw the Indians together as a group and to get them known as a people with special needs than anything that has occurred at all (December 11, 1940, Letter, Mitchell to Deloria).

On the same day he wrote to Collier:

> All who have known the Indian group there and who were present for the occasion agreed that it has done more than anything in recent years to draw all the conflicting groups together and to get the special situation of the Indians known throughout the state (December 11, 1940, Letter, Mitchell to Collier).

So successful was the pageant that tribal leaders requested Deloria's services the following year to organize another presentation. The leaders of the Red Banks Mutual Association (RBMA) decided to run an Indian fair in conjunction with the pageant (Ibid. Letter, Mitchell to Gordon, May 5, 1941). The fair was a tremendous success as was the second Indian pageant. The fair, which was held in October, had many displays of crafts, farming techniques, farm machinery, canning, art and fashion, animals, and music to draw large crowds. The RBMA received assistance for the college and the high school, the National Youth Administration, and the Indian Boy Scout troops. Deloria especially noted that the fair brought together the eight-five per cent of the people who lived in the isolated farm areas with the so-called "progressives" of Pembroke, and for the first time the progressives seemed genuinely impressed with and respectful of what the RBMA farmers and accomplished (Ibid.). At the height of their success war broke out and the fair and pageant were discontinued.

During this period the Siouan Council continued to function maintaining close ties with the RBMA. The council was increasingly concerned with the management of RBMA and Pembroke Farm affairs, and lodged complaints about mismanagement and racial discrimination with Senator Bailey (May 3, 1941, Letter, Chavis to Bailey). Bailey virtually ignored the complaints, relying on the assurances of the local white politicians that they were groundless. He went so far as to reject the personal overtures of George Mitchell from the Indian Office (June 19, 1941, Memo, Albert Maverick, Jr.).

At the conclusion of World War II the Department of Agriculture adopted the policy of disposing of surplus property holdings to returning veterans, to ease their reintegration into the economy. As part of this policy, the Department identified the National Youth Administration community center at Red Banks as surplus property and scheduled it for sale at public auction. The Indians immediately protested and enlisted the aid of Collier to prevent the sale.

Although Collier supported the tribe, they were too late and the building was sold to a local white man. A group of Indians then pooled their funds and purchased the center. The farm cooperative continued in operation until 1968 and was the longest operating government-sponsored cooperative in the nation (Raleigh News and Observer July 17, 1968).

Since its incorporation, Pembroke had been operating as an exception to the general laws of the state. Instead of electing its officials, as was the case with other towns in the state, the public officials were appointed by the governor. This was because Pembroke was the only non-reservation town in the state that was controlled by an Indian majority. However, in 1945, under pressure from returning Lumbee was veterans, the General Assembly was persuaded to return the franchise to the citizens of the town, thus ending the legal anachronism. Notwithstanding this change in the law, the Indian leadership agreed to continue the informal tradition shortly after 1917. The seats were divided, two white and two Indian, with each race running its candidates in alternate elections (Robesonian February 22, 1945). However, the arrangement lasted but a few years.

Post-War Period

In the early 1950s D.F. Lowry reopened the campaign to have the tribe's name changed, this time to the Lumbee Indians. The name was derived from the Lumber River, which got its name from the poetry of John Charles McNeill, a native of Scotland County (Thomas 1982: 11). The Lumber River was originally known as Drowning Creek until its names was changed in 1809 by the legislature (N.C. Public Laws, Chapter 32, 1809). The first reference to the tribe as the Lumbee Indians appeared in 1926 (Raleigh News and Observer February 21, 1926). In 1948 Lowry organized a group of Indian ministers to advance a broad spectrum of social and political programs, including changing the tribe's name. The group, which called itself the Lumbee Brotherhood, chose Lowry as its first president (Raleigh News and Observer May 12, 1953; Robesonian October 31, 1950, Pembroke Progress January 26, 1950).

In justifying Lumbee as the name of preference, Lowry argued that because the tribe was originally composed of members from different tribes, no one historical name was appropriate. Rather, the tribe should take its name from a geographical name, as had other tribes in the area. Lowry cited the Wateree and Peedee as examples (State December 20, 1952). An impetus to the organization of the Lumbee Brotherhood may have come from a group of rural Indians who organized in the spring of 1949 to obtain "special rights" (Robesonian April 22, 1949). Lowry's group was quick to disassociate itself from this group and its methods. In what appears to be a replay of the battles fought within the tribe over the Siouan bill, the Lowry group met opposition over its proposed name. Nonetheless, the Lumbee Brotherhood persisted and was able to get a bill introduced in the North Carolina Legislature in 1951 by State Senator Watts (Charlotte Observer April 2, 1951; Robesonian April 5, 1951). When it became clear that there was no consensus among the tribal members, the Assembly refused to act,

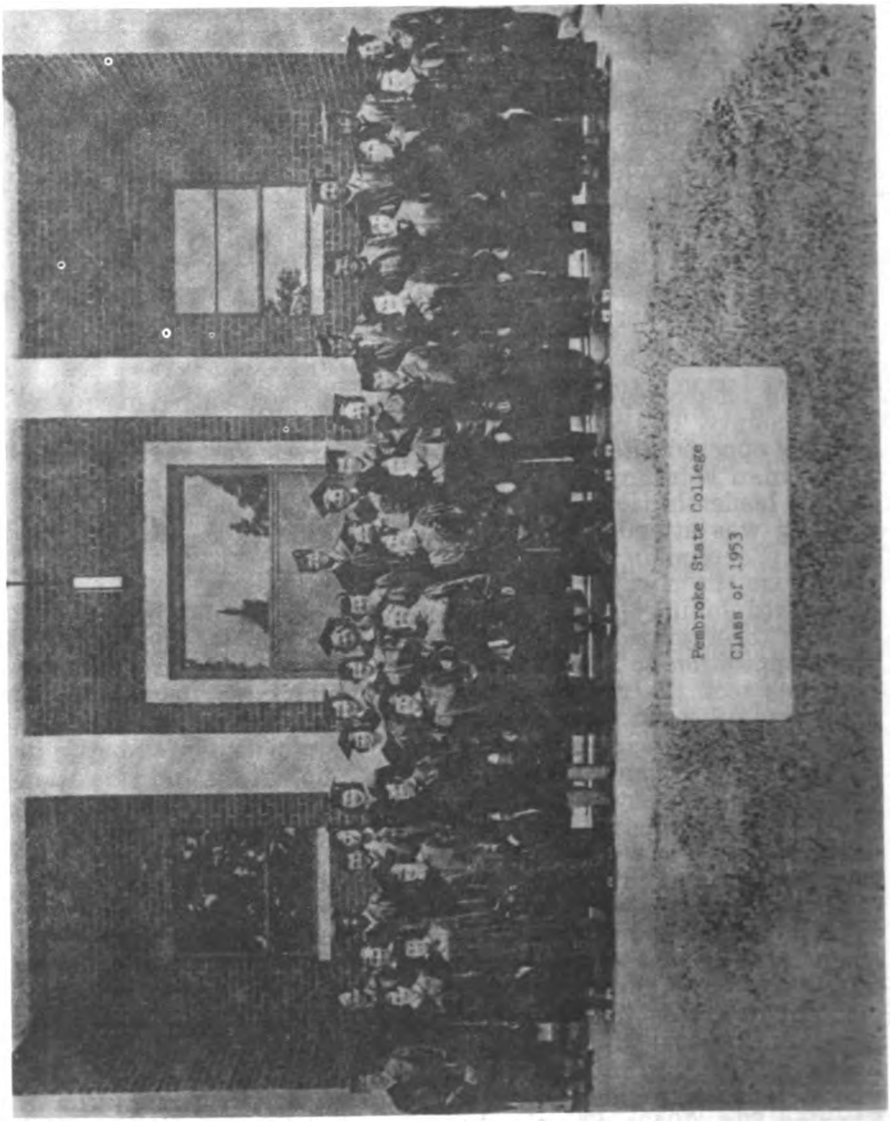
and, instead, passed a resolution calling for a vote of the Indian people in Robeson County on the name change (N.C. General Assembly Joint Resolution No. 36, 1951). Late that summer the Lumbee Brotherhood began circulating a petition in favor of the name change (Robesonian August 17, 1951). After some problems regarding the financing of the referendum, it was scheduled for February 2, 1952 (Robesonian January 8, 1952).

During January the entire Indian community was involved in the debate over the issue (Robesonian January 15, 1952, January 21, 1952, January 23, 1952, January 31, 1952, February 1, 1952; Raleigh News and Observer January 10, 1952). The choice presented on the ballot was either to adopt the name Lumbee or stay with the name Cherokee of Robeson County (Raleigh News and Observer January 10, 1952). The schools were to be used as polling places.

Voting took place on February 2, at the fourteen polling places in the county. The results were: 2,109 in favor of the name change and 35 opposed (Raleigh News and Observer February 4, 1952; Robesonian February 5, 1952). Immediately following the vote the Indian leadership called a mass meeting for February 14. This meeting was attended by the local delegation to the General Assembly (Robesonian February 13, 1952, February 15, 1952).

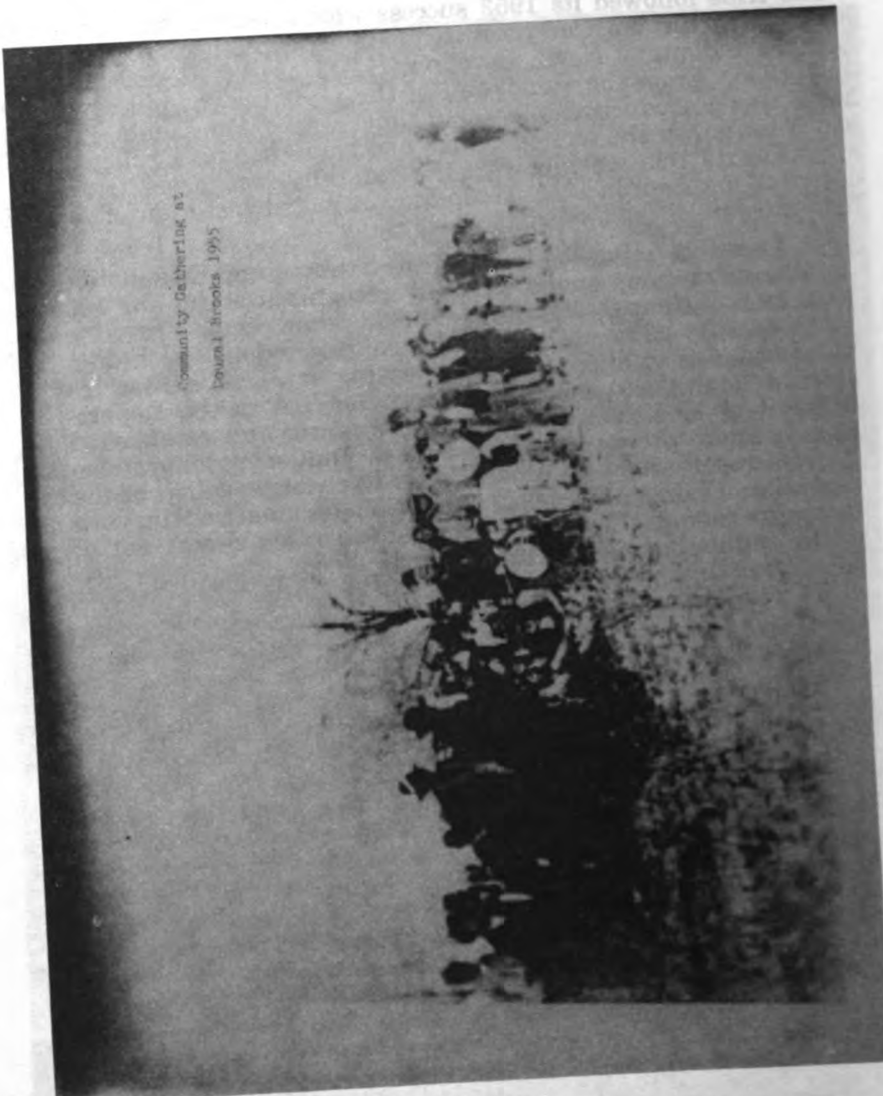
Because the next session of the legislature was not due to convene until January of the following year, tribal leaders had plenty of time to organize a campaign to get the change accepted. The same opposition to the 1951 legislative effort surfaced when the Lumbees took the results of the referendum to the legislature in February, 1953 (Raleigh News and Observer February 21, 1953). Through the winter and early spring the two sides waged battle in the halls of the General Assembly. Those supporting the legislation were led by D.F. Lowry. Judge L. R. Varser, long time friend of the tribe, spoke against the bill arguing that the change would open the schools to "every mulatto in Hoke and Cumberland" counties, who would claim to be Lumbees in order to get into the Robeson County schools (Raleigh News and Observer February 26, 1953).

After losing at the committee level, the opponents next challenged the validity of the referendum, claiming that the majority of the adult Indians had preferred to retain the Cherokee name, but had boycotted the vote. The opponents called for another referendum, however, this was not accepted by the Assembly Committee (Ibid. April 2, 1953). Finally, on April 20, 1953 the General Assembly enacted Senate Bill No. 114 into law (N.C. Public Laws Chapter 874, 1953). Shortly thereafter, the Lumbee Brotherhood called community meetings to celebrate (Raleigh News and Observer May 12, 1953).


Pembroke State College
Class of 1953

The tribe followed its 1953 success with a federal bill two years later. Congressman Carlyle introduced legislation to recognize the Lumbee Indians of North Carolina (U.S. House of Representatives July 1955). From the standpoint of the Lumbees the bill could not have been introduced at a worse time. Under Presidents Truman and Eisenhower the United States had embarked on a policy of terminating its relationship with the federally recognized tribes. As described by Laurence M. Hauptman, a noted historian of federal Indian policy of the twentieth century:

> These "termination laws" of the Truman and Eisenhower administrations ended federally recognized status for 109 Indian groups, totaling 13,263 individuals owning 1,365,801 acres of land; removed restrictions on Indian trust lands to allow for easier leasing and sale; shifted Indian health responsibilities from the BIA to the Department of Health, Education and Welfare; and established relocation programs to encourage Indian outmigrations from reservations to urban areas. Even the creation of the Indian Claims Commission in 1946 became tied in with congressional efforts at "getting the United States out of the Indian business" (Hauptman 1986: 31).



Community Gathering at
Dounal Brooks 1955

Because the prevailing federal policy the bill as proposed attracted the opposition of the Department of Interior. On August 3, 1955, Assistant Interior Secretary Orme Lewis wrote the Chairman of the House Committee on Interior and Insular Affairs, Clair Engle, that H.R. 4656 should be amended "to indicate clearly that it does not make these persons eligible for services provided through the Bureau of Indian Affairs to other Indians (U.S. House of Representatives January 18, 1956). The department opposed placing "XXX additional persons of Indian blood under the jurisdiction of this Department" (Ibid.). In spite of the opposition the committee recommended enactment of the bill (ibid.).

The bill passed the House without change and was sent to the Senate (Raleigh News and Observer February 22, 1956; Lumberton Post February 23, 1956; Robersonian February 21, 1956). When the bill emerged from the Senate Committee it contained the limitations proposed by the Department of Interior (U.S. Senate May 16, 1956). The amended bill was passed by the Senate on May 21, 1956 and by the House three days later and signed by the President on June 7, 1956 (70 Stat. 254–255).

AN ACT Relating to the Lumbee Indians of North Carolina

Whereas many Indians now living in Robeson and adjoining counties are descendants of that once large and prosperous tribe which occupied the lands along the Lumbee River at the time of the earliest white settlements in that section; and

Whereas at the time of their contacts with the colonists, these Indians were a well-established and distinctive people living in European-type houses in settled towns and communities, owning slaves and livestock, tilling the soil, and practicing many of the arts and crafts of European civilization; and

Whereas by reason of tribal legend, coupled with a distinctive appearance and manner of speech and the frequent recurrence among them of family names such as Oxendine, Locklear, Chavis, Drinkwater, Bullard, Lowery, Sampson, and others, also found on the roster of the earliest English settlements, these Indians may, with considerable show of reason, trace their origin to an admixture of colonial blood with certain coastal tribes of Indians; and

Whereas these people are naturally and understandably proud of their heritage, and desirous of establishing their social status and preserving their racial history: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumber River in Robeson County, and claiming joint decent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina shall, from the after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and shall continue to

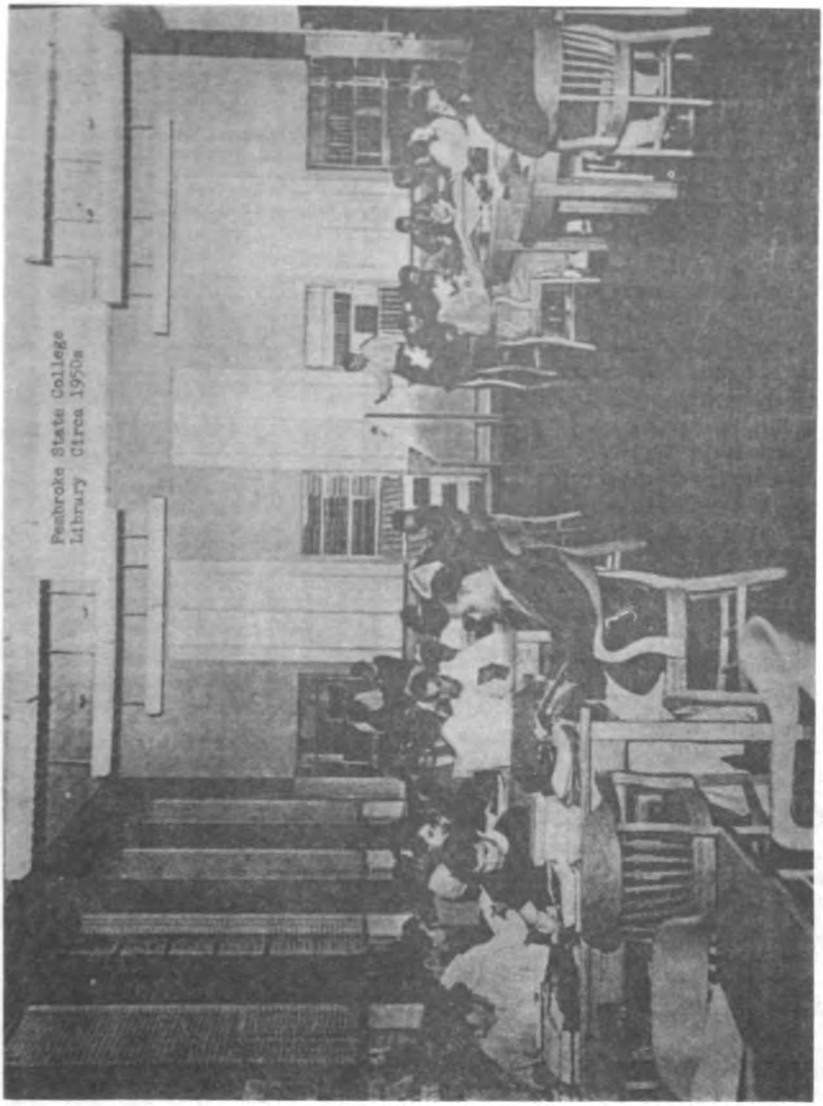
> enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

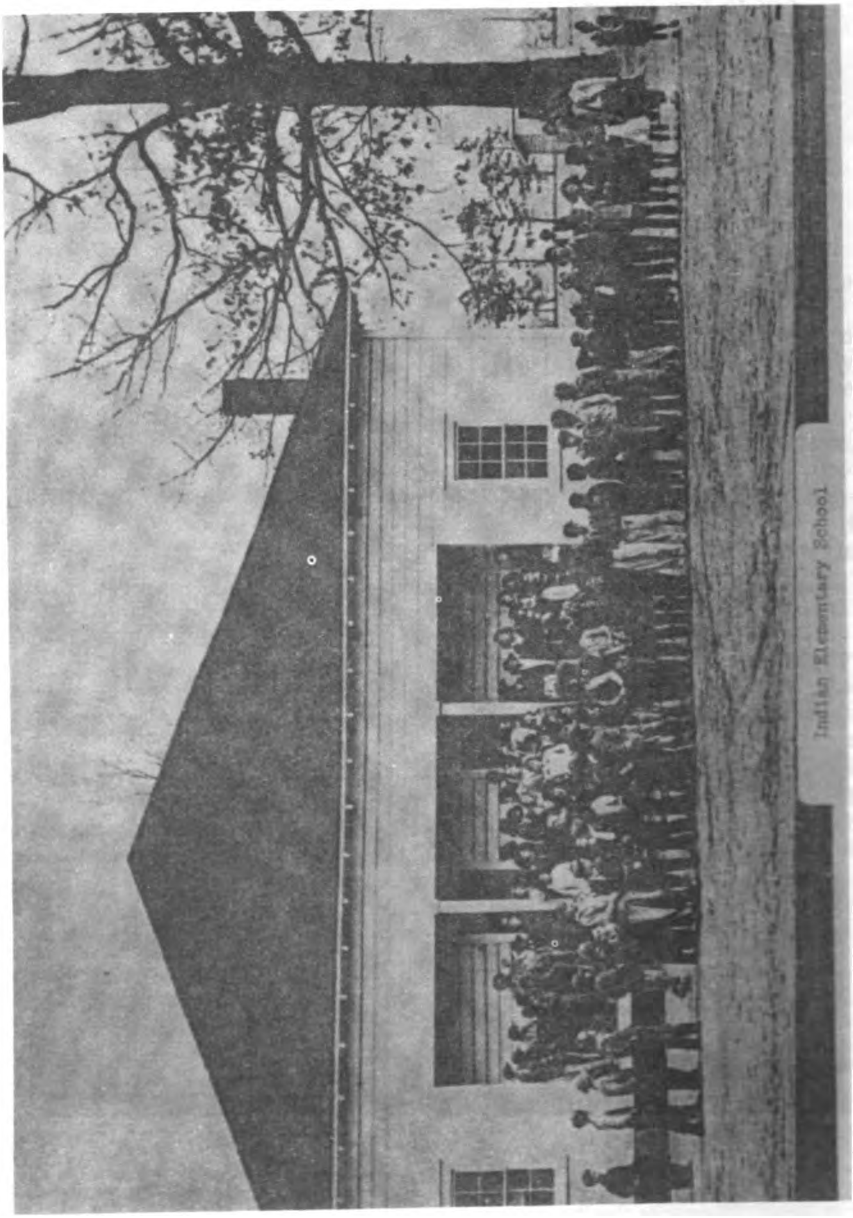
The tribe had finally received some degree of federal acceptance after fifty years of trying.

There can be no doubt that for the period covered by this section of the report the Lumbee have been continuously and repeatedly recognized as American Indians. This was made explicit by the State in the 1980s and by the federal government from the beginning of the twentieth century on. Federal and state officials have, on numerous occasions, detailed in this report, reviewed the evidence, and at no time did they question the fact that the tribe consisted of people of Indian descent. Federal reluctance with respect to acknowledge the tribe centered more on questions involving the extension of services and the attendant costs.

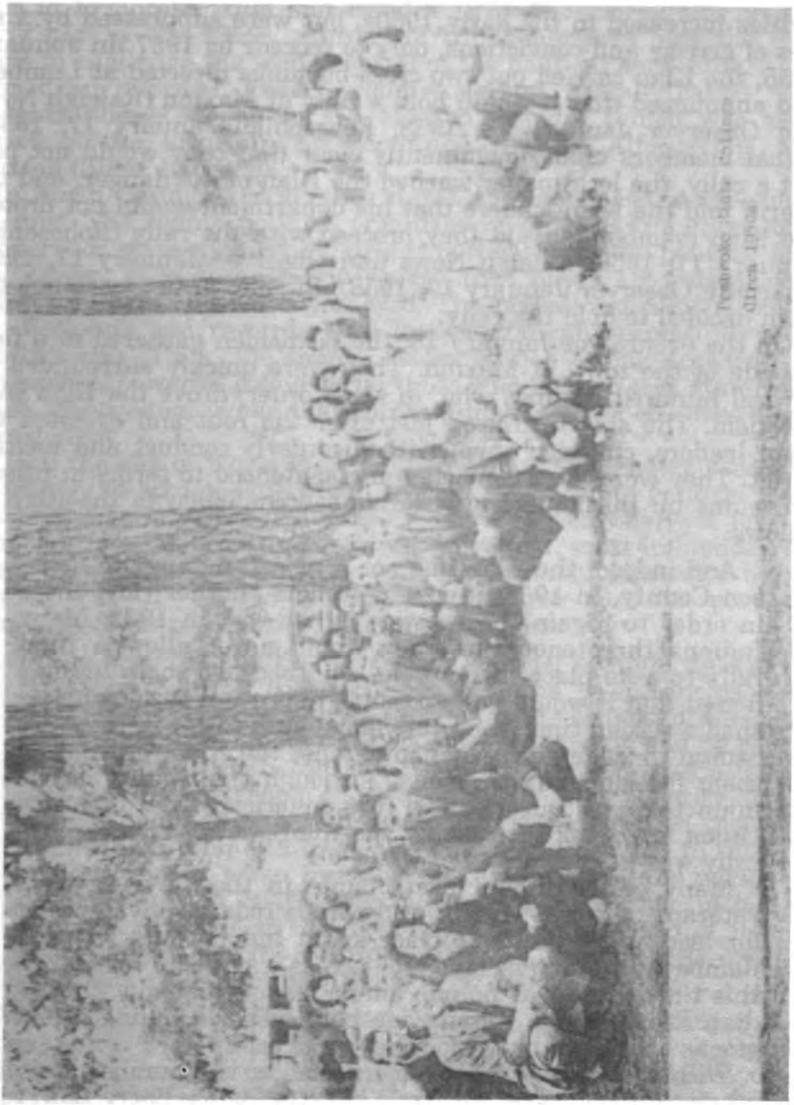
Recent Lumbee History

The 1950s were marked by a major change in Lumbee society. While the debate over the tribal name was going on, a new and potentially disruptive set of conditions was developing—the civil rights movement. The first indication of impending change came when the United States Supreme Court issued its decision in the case of Brown v. Board of Education of Topeka, Kansas, holding that separate facilities were inherently unequal. the case was decided in 1954, but its effect was not felt in Robeson County for ten years.


Pembroke State College
Library Circa 1950s



Indian Elementary School



Pembroke State College
Circa 1890s

More immediate was the impact of the Ku Klux Klan. Klan activities increased in the early 1950s, but were suppressed by a series of arrests and convictions, only to reoccur by 1957. In January, 1958, the Klan carried out two cross-burnings directed at Lumbees and announced that it would hold a rally at Maxton (Raleigh News and Observer January 18, 1958; Robesonian January 17, 1958). Tribal members made it eminently clear that they would not permit a rally, the local paper warned the Klan of the danger, and the sheriff told the Klan leaders that his department would not protect the Klan members should they proceed with the rally (Robesonian January 17, 1958; Raleigh News and Observer January 17, 1958; Charlotte Observer January 17, 1958). In spite of the warnings the Klan decided to hold the rally.

On the evening of January 18, the Klansmen gathered in a field outside of the town of Maxton. They were quickly surrounded by several hundred Lumbee who, in short order, drove the Klan from the field. The sheriff arrived just after the rout and arrested the Klan leaders, charging them with disorderly conduct and inciting a riot. They were later convicted and sentenced to terms in prison. Blu sums up the impact of the Lumbee challenge to the Klan as follows:

> And indeed, the Klan has not returned publicly to Robeson County. In 1966, it sought to hold another rally there in order to regain the prestige it had lost in 1958. Many Indians threatened that they would never allow a Klan rally to take place in Robeson. And because some Indians feared that it would be impossible to prevent serious bloodshed a second time, they persuaded authorities in the state capital to issue an injunction against the Klan, preventing them from holding the rally. Although the legality of the injunction was questionable (the American Civil Liberties Union later took the case for the Klan), it was effective. No rally was held.
>
> Many of the Indian participants in these events were veterans of World War II, and no one today is given credit for leading the Indians. Once again Indians had resorted flamboyantly to defensive violence as a political tactic, but this time there was no one heroic leader, and the "the Indian People" have become one hero in the retelling of the story.
>
> With the return to defensive violence, the Lumbee story seems to have come full circle back to Henry Berry Lowry days. But new possibilities emerged in the 1960s and new tactics began to be used. The net result of the brief and relatively unbloody return to defensive violence was, apparently, increased wariness and respect on the part of many Whites, and amplified pride on the part of Indians. This new situation helped Indians to take advantage of the possibilities opening before them and helped Whites to accept such Indian behavior, however reluctantly (1980: 90–90).

Even before the Klan incident Lumbees were showing a restiveness in their relations with the white power structure in the

county. By 1950, they were electing tribal members to all of the offices in Pembroke (Dial and Eliades 1975: 143). Beginning in the early part of the 1950s, a group of tribal members took the first steps to challenge the white control of the political apparatus. They formed an informal, loosely organized group, initially called "The Organizational," began in the Maxton District, which was comprised of the townships of Pembroke, Smiths, Alfordsville, and Maxton (Sider 1971: 122).

In North Carolina, as in other states, the county is the key political unit. The county political organization provides the grass-roots support for state-wide candidates; it is the core of the political partys' power. It is through the county that funds are raised, candidates chosen, and votes garnered. The process relies upon political discipline and rewards local leader who can successfully turn out the vote. Thus, the county leader with a strong organization can exert a powerful influence on those who hold or seek state-wide office. The system is one that thrives, unabashadly, on reward and punishment.

Until the end of World War II, Lumbee political leaders practiced a strategy of accomodation with respect to the white political leaders in the county. Local Lumbee leaders got out the vote for the Democratic candidates and received, in return, some influence over local affairs. But this strategy, while reasonably successful before World War II, offered diminishing returns for the post-war Lumbees. Sider provides the following insights:

> The patterns and the purpose of political accommodation is clearest during the early years of the re-enfranchisement of the Lumbee. Indians acting in the context of their Indian identity allied with the Democratic party, and by so doing obtained both concrete communal benefits (schools, laws, etc.) and freedom to institutionalize their identity as Indians. They thus, through accommodation, secured their separate position and brought prestige and benefits to this position. Later, when increases in real benefits, and when developments in Black political assertiveness came to be felt as a pressure to "do likewise," accommodation lost its effectiveness and its central position in the strategic orientations of the Lumbee (Sider 1971: 100).

While there was general agreement as to goals (i.e. Indian education, access to political power and jobs, and an end to segregated facilities) there was no consensus on methods to achieve these ends. The division within the Lumbee community centered on "* * * the issue of cooperating with the whites, 'going it alone,' or making political alliances with the Blacks" (Ibid.: 102–103). Complicating the problem of exerting independence was the fact that, in 1960, blacks and Indians in the county were equal in number and comprised 58% of the population, while whites made up the remaining 42%. In terms of individuals of voting age (twenty-one or older) the two categories were almost evenly divided: Indians and blacks 51%, whites 49% (Ibid.: 109). However, since these populations were not evenly distributed throughout the county, there were townships and precincts where Indians were a majority, others where whites were in the majority, and still others where the

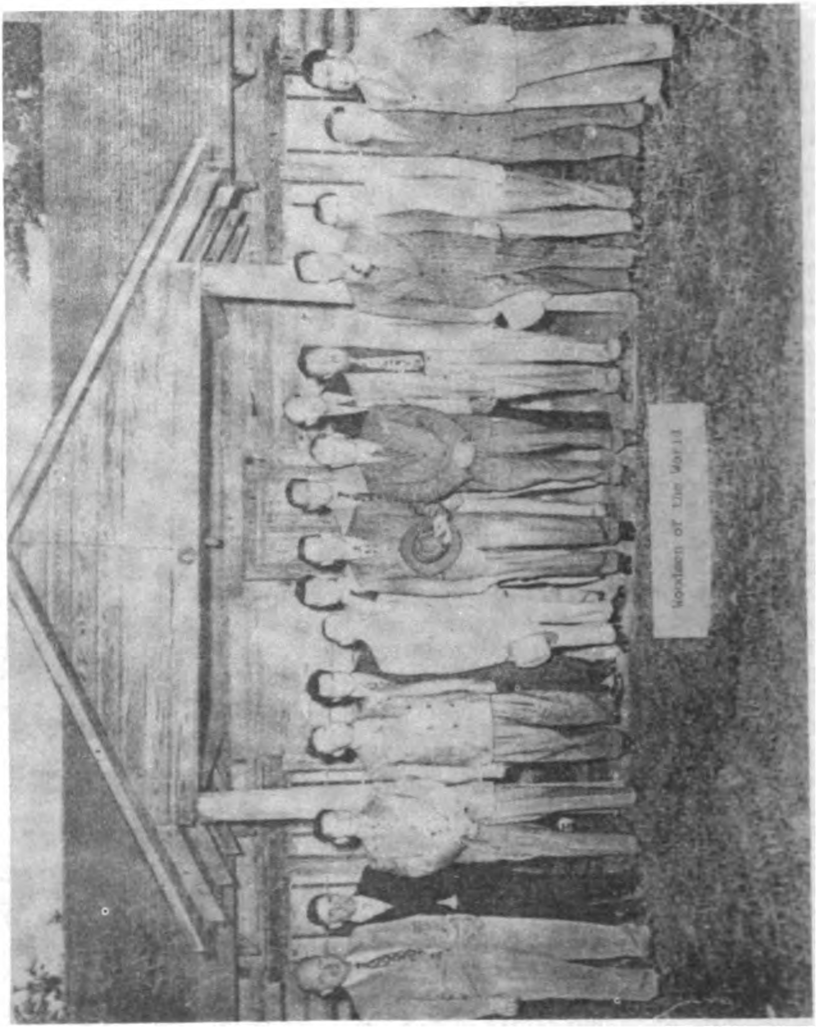
combined Indian-black population outnumber the whites (Ibid.: 121–122).

The Maxton district was one place where the Lumbees held a majority, and it was here, in 1956, that the Organization was successful in electing a Lumbee as judge. In 1958, they supported another Lumbee who was elected as county commissioner (Ibid.: 124).

The civil rights laws passed in the 1960s let to voter registration drives throughout the south. In 1967, the American Friends Service Committee (AFSC) began an intensive effort in Robeson County. This followed a drive directed by Dr. Martin Brooks, a Lumbee physician, in 1962. Using a $7,000 grant from the Voter Education Project of the Southern Regional Council, the drive was designed to combat the increased use by whites of the literacy test to deter Lumbee and black registration. This effort resulted in nearly 5,000 new registrants, including about 3,000 Lumbees (U.S. Commission on Civil Rights 1974: 8). Like the Brooks effort, the AFSC focused on registering Indians and blacks, and on increasing minority political involvement in all levels of county politics (Lumbee March 30, 1967: 3) The drive began in March, and by June Lumbee registration had increased from 4,618 to 5,842 (Ibid. June 15, 1967: 1). By October, Indians had increased to 6,974, a net gain of 2,356 Indian voters in a six month period (Ibid. October 5, 1967: 1). During this period an effort was made to establish a coalition between blacks and Lumbees. These efforts, their results, and the insights they allow into Lumbee political organization, as well as the labrynth party politics in Robeson County, have been carefully described and analyzed by Blu (1980).

In coordination with the registration effort, the Indian leadership began a campaign of political education and grassroots organization in an effort to consolidate the tribe's political clout. Between 750 and 800 Lumbees attended a fish fry organized by Carnell Locklear and Thadis Oxendine and held at Clark's Landing, near Maxton, in October, 1967 (Lumbee October 12, 1967: 1). Encouraged by the large turn-out, Thadis Oxendine and others began organizing other Lumbee settlements (Ibid. October 19, 1967: 1; October 26, 1967: 1; November 2, 1967: 1). These efforts were coordinated with political education meetings conducted by the AFSC (Ibid. December 7, 1967: 1; December 14, 1967: 1). In addition, some effort was made to bring the political power of Indians and blacks into a coalition in Robeson County, a clear threat to the white-controlled status quo (Ibid. November 9, 1967: 1).

Marvin Locklear and son,
Rudolph, Circa [illegible]


Woodmen of the World

At the time when the Lumbees were meeting with some limited success in their quest for representation, they were faced with a number of severe challenges to their autonomy and identity. First among these was desegregation. The most serious threat to Lumbee autonomy came in 1954 with the U.S. Supreme Court decision in Brown V. Board of Education, although the effect was slow to manifest itself. It was not until the 1964–1965 school year that the Robeson County school system made any effort to integrate. By 1969 most schools in the state has been forced to integrate; however, the Lumbee schools were still in tribal control. Tribal leaders saw integration as a means by which blacks were allowed access to white schools, not as a mechanism to force Lumbees, who were satisfied with the school system they had constructed through eighty years of struggle and sacrifice, to attend predominantly white and black schools.

In the summer of 1970, some tribal members formed a political action group called Independent Americans for Progress, whose principal purpose was the preservation of the Lumbee school system (Winston-Salem Journal Sentinel July 5, 1970). Shortly after its formation, the leaders called a rally to Pembroke to discuss Indians grievances. Billed as a "Red Power" rally, it was attended by around 1,000 Lumbees (Sider 1971: 156). The speakers called for boycotts of white stores that refused to hire Lumbees, the organization of an Indian bank (which was started in December, 1971) and the development of the Indian-owned shopping center. The Lumbees were warned "* * * against patience, distrust of each other, and neutrality" (Ibid.). There was additional expressions of tribal pride and independence. In line with this overt manifestation of Indian identity as the organization of the Lumbee Homecoming in 1970.

Tribal leaders announced their intention to fight the loss of the schools (Robesonian August 26, 1970). That fall, as the county attempted to integrate the schools (mostly by integrating black and Indian schools), the Lumbees defied the county, staged a sit-in, and filed a law suit (Raleigh News and Observer September 10, 1970: 3, September 11, 1970; Winston-Salem Journal September 11, 1970; New York Times September 13, 1970). Lumbee leaders protested the change and asked the Department of Health, Education and Welfare to allow them to keep their schools separate (Robesonian September 2, 1970). When this failed Lumbee parents filed a suit in the U.S. District Court for the Eastern District of North Carolina, seeking to enjoin the Robeson County Board of Education from including the Lumbee schools in its desegregation plan, and asking that the Unitod States Department of Health, Education and Welfare be prevented from supplying funds to the county school system (Raleigh News and Observer September 25, 1970). The suit became known as the Prospect Suit.

The case was heard by Judge Algernon Butler who denied a request for an injunction (Ibid.). By that time it was too late for the county to carry out its desegregation plan.

The following fall the county again attempted to integrate the Lumbee schools by busing black children in and Lumbee children out to black schools. Thirty-five Lumbee parents, impatient with the court delays, blockaded the Prospect school; someone went so

far as to threaten the life of Danford Dail, the school's principal. Many parents held their children out and the situation became so intense that the school was closed (Ibid. August 31, 1971). Dial, caught in the middle, offered his resignation. The Board of Education passed a resolution banning unauthorized persons from school property, and, a week later, reopened the school. Seven parents were prosecuted and convicted in connection with the disorders (Robesonian September 9, 1971; September 23, 1971: 3). In the meantime, the suit was stymied in the courts, the county school using it as a means to delay integration. This continued until 1978 when, its value gone as a device to prevent integration, the suit was dismissed (Carolina Indian Voice September 28, 1978; 1; hereinafter CIV).

As a result of this turmoil a group of parents of Prospect High School students, along with other Lumbees concerned about the school situation, formed another organization in December, 1971, called the Eastern Carolina Indian Organization (Raleigh News and Observer January 9, 1972). Carnell Locklear was one of the early leaders of the group, which had as its stated purpose to pursue federal recognition of the tribe (Ibid.).

The members of the Eastern Carolina Indian Organization began calling themselves Tuscaroras. There were a number of factors that precipitated the use of the Tuscarora name for what was and is a dissident faction of the Lumbee tribe. First, the Tuscarora adherents felt that one reason the Indians of Robeson County were repeatedly turned aside in the attempts to gain recognition by the federal government was the lack of a historically recognized name. The name "Croatan" was a place name, while "Lumbee" was thought of primarily in a riverine association. The name "Cherokee Indians of Robeson County" had caused problems with the Eastern Band of Cherokee and had provided an excuse for ridicule by some federally recognized tribes. It had, nonetheless, convinced many people in Robeson County that the tribe required the name of a historically known Indian nation as a precondition to full federal recognition. Some of these individuals resentod the 1953 and 1956 change from Cherokee to Lumbee.

The second basis for their contention relatod to an assertion that one of their ancestors was Tuscarora. According to this argument, James Lowrie, one of the primal ancestors of the tribe, had married a "half-breed" Tuscarora woman (Norment 1875: 5). As a result, a large number of families thought of themselves as descendants of the Tuscaroras.

Their third concern related to the 1956 Lumbee Act. According to the Tuscarora view, the language of the act was perceived as keeping the Lumbees from full recognition. The Tuscaroras not only wanted to disassociate themselves from the name Lumbee because of the act, they also viewed the Lumbee leadership as, in some measure, responsible for problems that resulted from the act. Finally, during the hearings in the Prospect suit, Judge Butler apparently had suggested to the Prospect parents that if they were unhappy with the Lumbee name and desired the name of an historical tribe one was available—Tuscarora. Given the frustrations of the members of the Eastern Carolina Indian Organization with the school situation, the Lumbee name and act, the Lumbee leadership,

and the tribe's nebulous status, the ECIO leadership adopted and promoted the use of the name Tuscarora (Raleigh News and Observer October 15, 1972; Robesonian January 7, 1972).

The continuing controversy over the Lumbee name caused Doctor Fuller Lowry to submit a lengthy response in which he outlined the earlier controversy. In an article entitled "Lumbee Indian Act of 1953: Its Origin and Rationale," Lowry described the efforts that led to the use of the tribe's name.

> It would appear that history is repeating itself, and the name of the Indians living in and near Robeson County is being considered again for a change. The purpose of this letter is to remind all of you, especially the young, of the long and arduous road by which we and our ancestors arrived at the present name: Lumbee Indians.
>
> Prior to the Revolutionary war of 1775 our Indian ancestors had assembled along Drowning Creek, now Lumber River, in the area now Robeson County. It was an assembly point for distressed Indians seeking geographic safety. At that time there were Indians here from multiple groups—Corees, Cheokees, Red Bones, Tuscarora, Hatteras and other tribes—the resultant of amalgamation with Colonists since 1587. Our group joined in winning independence from the British, having always been full citizens of the state and nation in which they lived. Some of our men drew pensions for wounds received in the Revolutionary was. (William Lowry Pension File No. 6732). Others received bounty land for such services, (John Brooks, Warrant No. 80030).
>
> After helping with (sic) independence in 1775 we continued to be full citizens of the United States and in the War of 1812 placed some ten Indian boys in the Army, contributing to that victory. The father of Henry Berry's (Lowry) mother, Stephen Cumbo, was such a soldier. By this time the application of a tribal name due to our multiple origins was difficult indeed, if not impossible. However, we went to church, school, voted and fought in the military service, enjoying all the rights of full citizenship.
>
> In 1835 Sect. III, Clause 3 of the Constitution of North Carolina was approved withdrawing voting privileges from free persons of color. The local government of Robeson County declared and implemented the law to include Indians. The voting privilege was denied, we were removed from churches and schools, and when the Civil War began, 1860, we were denied the privilege of serving as soldiers in the Confederate Army.
>
> The above described events shocked the entire Indian Community and brought on chaotic conditions which became progressively worse until 1880. In 1868 the courts ruled that the law of 1835 did not and had never applied to Indians of Robeson County (State V. Wolf 145 N.C.; State V. Tachanatah 64 N.C. 641). Before 1835 and during the repression period we were without a name. In 1885 the North Carolina Legislature gave us the name Croatan Indians, knowing of the descent of many of us from White's

Colony of 1587 (Laws of N.C. 1885–Chap. 51). This was our name, although unpopular, until 1911, or for 26 years.

The Legislature of North Carolina was persuaded at the 1911 session to change the name again to Indians of Robeson County, an accurate geographic name (P.L. of N.C. 1911 Chap.—215). This name was of short duration and in 1913 was changed Cherokee Indians of Robeson County (P.L. of N.C. 1913– Chap. 123). Obviously, those Indians not of Cherokee descent were unhappy with the name. The name was more durable, however, and remained in effect from 1913 to 1953.

Multiple efforts continued to change the name, to have a tribal reservation and to seek government pensions as some reservation Indians. All these efforts were without success, yet there was in absence of tranquility among our people on the whole issue. Accordingly, a group of leaders among us joined in support of a name previously suggested—Lumbee—which would give us a well adapted legal name, geographically proper, and equally support the historical fact of our multiple tribal origins.

First, our group of leaders contacted and made representation to our state legislators of Robeson County. The writer was requested to draft a letter to our three members of the N.C. Legislature and solicit their assistance and action in the effort. This letter was signed by Harry Wess Locklear, C.E. Locklear, L.W. Jacobs and D.E. Lowry.

A meeting was then requested with all concerned, including area representatives of the Indian Community, to draft the necessary legislation for a change of name. Indians attending the meeting were Early Bullard, Orine Bullard, Lindsay Revels, L.W. Jacobs, Burt Locklear, Harry Wess Locklear, C.E. Locklear, J.A. Wilkins, Fuller Locklear, Luther Moore and D.F. Lowry. The result of these studies and meetings was the completion and eventual approval of a change of name from Cherokee Indians of Robeson County to Lumbee Indians of the State of North Carolina (Laws of N.C. 1953, Chap. 814, page 747).

[Lowry then quoted the act in its entirety.]

Following the draft of the above legislation the Commissioners of Robeson County held a duly constituted referendum and the bill was approved by a vote of some 2,000 for an 30 against. The Commissioners then unanimously concurred in the referendum result, following which the legislature enacted it into law. It was then submitted to the House and Senate of the U.S., passed and signed by the President of the U.S., with minor amendments, as national legislation.

Hence, since that time we have been Lumbee Indians of Robeson County, North Carolina and the United States. Today, we are legally and geographically known as Lumbee Indians by all concerned, including all Indian tribes and groups in North and South America. The writer believes that this name has really solved a difficult histori-

cal problem and should not be changed (Robesonian February 22, 1973: 3).

Recent Lumbee History

Although the efforts to change the content of the Lumbee legislation failed, there existed a number of issues that required the attention of the Lumbees and other tribes in the state. Urged on by common problems, particularly those related to schools, the Lumbee leaders in concert with leaders from the Waccamaw-Siouan, Coharie, and Haliwa-Saponi tribes successfully lobbied for the creation of a North Carolina Commission of Indian Affairs. The commission was created by law on July 20, 1971 (N.C. Session Laws 1971 Ch. 1013: 1591–1593, codified as G.S. 71–1 to 20). The initial act was amended several times. The act provides for a commission consisting of four members from state government, two appointed by the General Assembly, and fifteen Indian members selected from six Indian communities, two each from six communities (Haliwa-Saponi, Coharie, Waccamaw-Siouan, Coharie, Guilford County, Cumberland County, and Mecklenburg County), and three from the Lumbee community. The executive director is required to be of Indian descent. The commission's purpose is to assist the state's Indian communities in a wide range of social, legal, political, economic, and cultural concerns (Ibid.).

In 1972, the Board of Trustees of Pembroke State University decided to demolish the Main building on the campus and replace it with another structure. Very quickly, a group formed to "Save Old Main," led by Janie Maynor Locklear, Danford Dial, Luther M. Moore, and W.J. Strickland (Robesonian January 21, 1972: 1). From all accounts the effort was initiated and to a large degree directed by Janie Maynor Locklear.

A number of prominent Lumbees gave their support to the demolition project pointing out that the building had outlived its usefulness, the space was needed for a more modern building, and the cost of renovation would exceed the cost of new construction. Voicing such a view was John L. Carter, twice a graduate of Pembroke.

> 'I graduated from Pembroke once when it was a two-year normal college,' he explained. 'Then they stepped it up to a three year school in 1935 and into a four-year school in 1940. I went back and graduated again in 1940.'
>
> 'Keeping Old Main would just be for sentimental reasons,' Carter said. 'And it's just too large to save for a monument.'
>
> 'I don't like the idea of standing in the way of progress,' he continued. 'I think Old Main has served its purpose.'
>
> Carter said he didn't think Old Main could be feasibly renovated. 'When you start renovating one thing, you usually upset another. It's usually cheaper to build from scratch.'
>
> 'Maybe they could take the front of it and save that—for a symbol,' he added.
>
> Lonnie Oxendine, 69 year old graduate of the class of 1929, also feels that Old Main has served her purpose.
>
> 'I don't think we should retard progress,' he said. "The building needs to come down. It has been condemned by

> the state. I've talked with Jones and others and it's my understanding that it can't be renovatod.'
>
> English Jones, himself a Lumbee Indian and president of the university says that the matter is entirely out of his hands.
>
> 'I'm willing to abide by the decision of the state,' he said. "Old Main has been condemned by the state. Funds have been approved to build a facility to replace it. There are no funds available to renovate it.'
>
> 'Old Main is in a very bad state of repair,' he continued. The plaster is falling in. You can't heat it properly in the winter or cool it in the summer.'
>
> 'As an administrator.' he added, 'I have to concern myself with providing facilities for present and future students.' He added that an unofficial estimation of the cost of restore (sic) Old Main was in the neighborhood of half a million dollars (Ibid.).

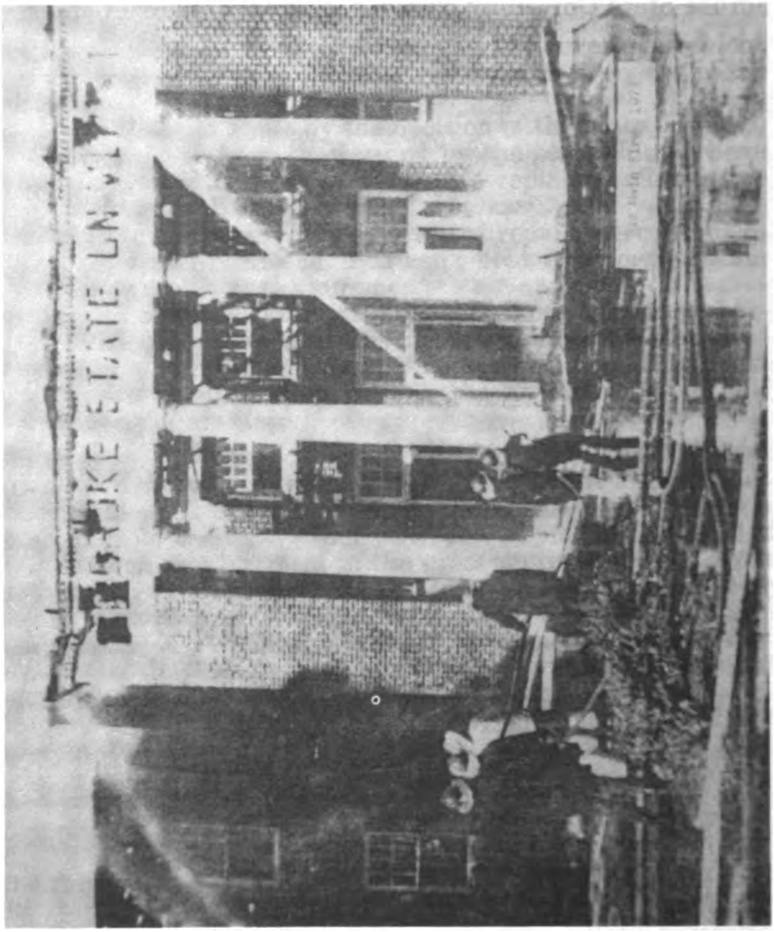
Those opposed to the demolition of Old Main saw the issue in cultural terms, not economic ones. Danford Dial argued that the building was an intregal part of the tribe's heritage, a focus of its history. He told the local paper that "It's a symbol. A symbol of Indian education and progress in the great state of North Carolina—something that every Indian should treasure" (Ibid.). Janie Maynor Locklear, referring to Old Main as a visual symbol of Indian education, argued that "[i]f the building is demolished then the last ties between the Indians and the university will be broken" (Pine Needle January 20, 1972).

Danford Dial, Janie Maynor Locklear, and Carnell Locklear appealed to the Board of Trustees, asking them to change their minds, or at the very least, to allow the committee time to explore other options such as setting up a non-profit corporation to repair the building, and using it for a tribal museum. The board, however, refused to delay their decision (Ibid.).

The Save Old Main committee, realizing that the board was adamant, took steps to gain public support. Through rallies, demonstrations, news articles, and an almost endless succession of meetings they built a strong public appeal that increasingly placed the Board of Trustees on the defensive. They gained support from organizations like the National Congress of American Indians, and prominent Indian leaders like Louis R. Bruce, then Commissioner of Indian Affairs. Nor did they neglect the white politicians. They were able to get the support of gubernatorial hopeful Hugh Morton (Raleigh News and Observer February 12, 1972). In the middle of February, 1972, the governor of the state, Bob Scott, acknowledged receiving "* * * a letter from the White House urging the saving of the Old Main building on the campus of Pembroke State University" (Greensboro Daily News February 13, 1972). The governor did not commit himself to the building's restoration.

The struggle to save the building continued for a full year, and when it seemed that the committee would be victorious, tragedy struck. On March 18, 1973, Old Main was burned to the ground (Winston-Salem Journal March 19, 1973; Winston-Salem Sentinel March 19, 1973). The tribe overcame this blow and pushed hard for reconstruction of Old Main, which they eventually accomplished.

The building was completed by 1975 and made the site of the new Pembroke State University Native American Resource Center.



The problem of Old Main had hardly been settled when the Lumbee leadership began its efforts to end the inequitous system controlling the Robeson County Board elections. The system, called "double voting," allowed whites in the major towns to vote with the whites, who were in the minority in the remainder of the country, to maintain white control over the county school system. Robeson County had five school administrative units for the towns, all controlled by whites and non having a predominantly Indian population. The five towns with separate schools were Lumberton, Red Springs, St. Pauls, Parkton, and Maxton. The rest of the county consisted of Indian and black schools that were being integrated. Through careful drawing of the boundary lines of the white school systems significant numbers of blacks and Indians were excluded; thus integration meant the mixing of blacks and Indians. Residents of the town administrative units were allowed to vote for both town and county school board members. County residents could vote only in county elections.

For 1972–1973, the county system consisted of 56.8 percent Indian and 22.8 percent black. In terms of staffing 58.7 percent of the professional staff were Indian and 17.3 percent were black; out of 544 teachers, 314 were Indian and 98 were black (Raleigh News and Observer April 20, 1973: 31; Winston-Salem Journal April 20, 1973). The county school board consisted of twelve members, two of whom were Indian and one of whom as black (Winston-Salem Journal May 10, 1973). Thus while the school system was predominantly Indian, it was dominated by whites, elected by voters who sent their children to different school systems. Given the importance of education to the Lumbees, this was an intolerable situation. In a few short years they had gone from an autonomous educational system to one that forced their children to be bused beyond the limits of their respective settlements, and that permitted outsiders to dictate their educational values.

The battle to remedy this situation was led by Janie Maynor Locklear, Dexter Brooks, Harbert Moore, and Robert Mangum, among others. In May, 1973, forty Lumbee leaders took their protest of double voting to the General Assembly (Raleigh News and Observer May 31, 1973). When no satisfactory response appeared likely, the Lumbee leaders decided to sue in federal court under the Voting Rights Act (U.S. Commission on Civil Rights 1974: 13). A hearing was held before Judge Algernon Butler, who denied relief (CIV January 18, 1973: 2). The case was then appealed to the Fourth Circuit Court of Appeals, which on April 23, 1975, reversed Judge Butler and ordered a halt to town residents voting in county school elections (Winston-Salem Sentinel March 17, 1973). Within a year the composition of the Robeson County Board of Education changed from a majority of whites to a majority of Indians. The county system at the time was over sixty percent Indian (Winston-Salem Journal April 30, 1973).

The language of the Lumbee Bill continued to cause some of the tribal leaders problems. In 1974, they prevailed upon Congressman Charlie Rose and Senator Jesse Helms to introduce legislation to clarify that the Lumbees were entitled to participate in non-Bureau of Indian Affairs federal programs on an equal basis with all other tribes. Hearings were held in April, 1974 (U.S. Commission on

Civil Rights 1974; Winston-Salem Sentinel September 17, 1974). Brantley Blue, Linda Oxendine, Helen Scheirbeck, Tom Oxendine, Jo Jo Hunt, Purnell Swett, Rod Locklear, and others worked with Congressman Rose and Senators Erwin, Abourezk, and Helms. The bill drew opposition from the Tuscaroras led by Howard Brooks, the Eastern Band of Cherokee, and other reservation tribes (U.S. House of Representatives 1974). Brooks argued that what was needed was a change of the tribe's name to Tuscarora, a reservation, and full recognition of all Indians in Robeson County. He sent a petition containing 151 signatures to Congressman Rose and the Committee on Interior and Insular Affairs (U.S. House of Representatives April 5, 1974). Senator Jesse Helms introduced identical legislation.

The House Committee on Interior and Insular Affairs made its report on October 1, 1974, recommending enactment of H.R. 12216 (U.S. House of Representatives 1974). John Kyl, Assistant Secretary of the Interior, expressed his views on the legislation and recommended that more explicit language be used to make clear that the bill did not accord the Lumbees the status of a federally recognized tribe (Ibid.). The House took no action on the bill that session; the following year Helms re-introduced the bill in the Senate. Again the bill died.

Although the efforts of the tribal leaders were effective in gaining the support of their congressmen, they were stopped by the mis-information and myopia of the administration, and the opposition of Indian groups, particularly the United Southeastern Tribes and some federally recognized tribes that feared that their funding would be jeopardized by the addition of the Lumbees.

Throughout the period the Lumbee tribe was undergoing an important organizational change. In 1968 a group of Lumbee leaders including W. J. Strickland, James H. Woods, Horace Locklear, Rod Locklear, A. Bruce Jones, Adolph Dial, and Tommy Dial, formed an organization to improve the economic and social conditions of the tribal members in Robeson and adjoining counties. This was made necessary by the failure of an existing program to meet these needs. Initially the organization was named the Regional Development Association, but within a year of its chartering the name was changed to the Lumbee Regional Development Association. The new organization operated through a Board of Directors that was self-perpetuating. Its day-to-day operations were managed by an Executive Director; the first individual to hold this position was Tommy Dial.

In 1975, LRDA's charter was changed to permit the election of the Board of Directors by members of the Lumbee tribe. Under the new charter there are seventeen members on the board; fourteen are elected by districts, while three are elected at large to represent Hoke County, Raleigh, North Carolina, and Baltimore, Maryland. In 1984, LRDA was empowered by the tribal members to submit a petition on their behalf for federal recognition.

Summary

In the nearly 300 years covered in this Historical Narrative we have demonstrated that the present-day Lumbee tribe descended from an indigenous Indian population of North Carolina, that there

was a recognized Indian community in existence as early as the 1750s, before there was any appreciable white settlement in the area, that that community with its leaders continued in the same location to the present day, and that that Indian community has maintained or exerted political leadership or control over its members. We have further argued that in all likelihood that community was made up of members from a number of tribes, the most dominant one being the Cheraw. Finally, we have shown that the federal, state and local governments have recognized the existence of Lumbees as an Indian Group since the nineteenth century, and that the Lumbees have maintained a separate existence despite a century of racism and mistreatment.

LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATION

H.R. 334 was introduced by Representative Rose on January 5, 1993. The Subcommittee considered the measure on May 3, 1993 and reported the bill to the Full Committee. On June 16, 1993, the Committee on Natural Resources, by recorded vote, approved the bill and recommends its enactment by the House.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF JUNE 7, 1956

AN ACT Relating to the Lumbee Indians of North Carolina

Whereas many Indians now living in Robeson and adjoining counties are descendants of that once large and prosperous tribe which occupied the lands along the Lumbee River at the time of the earliest white settlements in that section; [and]

Whereas at the time of their first contacts with the colonists, these Indians were a well-established and distinctive people living in European-type houses in settled towns and communities, owning slaves and livestock, tilling the soil, and practicing many of the arts and crafts of European civilization; [and]

Whereas by reason of tribal legend, coupled with a distinctive appearance and manner of speech and the frequent recurrence among them of family names such as Oxendine, Locklear, Chavis, Drinkwater, Bullard, Lowery, Sampson, and others, also found on the roster of the earliest English settlements, these Indians may, with considerable show of reason, trace their origin to an admixture of colonial blood with certain coastal tribes of Indians; [and]

Whereas these people are naturally and understandably proud of their heritage, and desirous of establishing their social status and preserving their racial history [:Now, therefore,];

Whereas the Lumbee Indians of Robeson and adjoining counties in North Carolina are descendants of coastal North Carolina Indian

tribes, principally Cheraw, and have remained a distinct Indian community since the time of contact with white settlers;
Whereas the Lumbee Indians have been recognized by the State of North Carolina as an Indian tribe since 1885;
Whereas the Lumbee Indians have sought Federal recognition as an Indian tribe since 1888; and
Whereas the Lumbee Indians are entitled to Federal recognition of their status as an Indian tribe and the benefits, privileges, and immunities that accompany such status: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Indians now residing in Robeson and adjoining counties of North Carolina, originally founded by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. [Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

[SEC. 2. All laws and parts of laws in conflict with this Act are hereby repealed.]

FEDERAL RECOGNITION; ACKNOWLEDGMENT

SEC. 2. (a) Federal recognition is hereby extended to the Lumbee Tribe of Cheraw Indians of North Carolina. All laws and regulations of the United States of general application to Indians and Indian tribes shall apply to the Lumbee Tribe of Cheraw Indians of North Carolina and its members.

(b) Notwithstanding the first section of this Act, any group of Indians in Robeson or adjoining counties whose members are not enrolled in the Lumbee Tribe of Cheraw Indians of North Carolina, as determined under sections 4(b), may petition under part 83 of title 25 of the Code of Federal Regulations for acknowledgment of tribal existence.

SERVICES

SEC. 3. (a) The Lumbee Tribe of Cheraw Indians of North Carolina and its members shall be eligible for all services and benefits provided to Indians because of their status as federally recognized Indians, except that members of the tribe shall not be entitled to such services until the appropriation of funds for these purposes. For the purposes of the delivery of such services, those members of the tribe residing in Robeson and adjoining counties, North Carolina, shall be deemed to be resident on or near an Indian reservation.

(b) Upon verification of a tribal roll under section 4 by the Secretary of the Interior, the Secretary of the Interior and the Secretary of Health and Human Services shall develop, in consultation with the Lumbee Tribe of Cheraw Indians of North Carolina, a determination of needs and a budget required to provide services to which the members of the tribe are eligible. The Secretary of the Interior and the Secretary of Health and Human Services shall each submit a written statement of such needs and budget with the first budget request submitted to the Congress after the fiscal year in which the tribal roll is verified.

(c)(1) The Lumbee Tribe of Cheraw Indians of North Carolina is authorized to plan, conduct, consolidate, and administer programs, services, and functions authorized under the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 452, et seq.), and the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13), popularly known as the Snyder Act, pursuant to an annual written funding agreement among the Lumbee Tribe of Cheraw Indians of North Carolina, the Secretary of the Interior, and the Secretary of Health and Human Services, which shall specify—

(A) the services to be provided, the functions to be performed, and the procedures to be used to reallocate funds or modify budget allocations, within any fiscal year; and

(B) the responsibility of the Secretary of the Interior for, and the procedure to be used in, auditing the expenditures of the tribe.

(2) The authority provided under this subsection shall be in lieu of the authority provided under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, et seq.).

(3) Nothing in this subsection shall be construed as affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from lawsuit enjoyed by the Lumbee Tribe of Cheraw Indians of North Carolina or authorizing or requiring the termination of any trust responsibility of the United States with respect to the tribe.

CONSTITUTION AND MEMBERSHIP

SEC. 4. (a) The Lumbee Tribe of Cheraw Indians of North Carolina shall organize for its common welfare and adopt a constitution and bylaws. Any constitution, bylaws, or amendments to the constitution or bylaws that are adopted by the tribe must be consistent with the terms of this Act and shall take effect only after such documents are filed with the Secretary of the Interior. The Secretary shall assist the tribe in the drafting of a constitution and bylaws, the conduct of an election with respect to such constitution and bylaws, the conduct of an election with respect to such constitution, and the reorganization of the government of the tribe under any such constitution and bylaws.

(b)(1) Until the Lumbee Tribe of Cheraw Indians of North Carolina adopts a constitution and except as provided in paragraph (2), the membership of the tribe shall, subject to review by the Secretary, consist of every individual who is named in the tribal membership roll that is in effect on the date of enactment of this Act.

(2)(A) Before adopting a constitution, the roll of the tribe shall be open for a 180-day period to allow the enrollment of any individual

previously enrolled in another Indian group or tribe in Robeson or adjoining counties, North Carolina, who demonstrates that—

(i) the individual is eligible for enrollment in the Lumbee Tribe of Cheraw Indians; and

(ii) the individual has abandoned membership in any other Indian group or tribe.

(B) The Lumbee Tribe of Cheraw Indians of North Carolina shall advertise in newspapers of general distribution in Robeson and adjoining counties, North Carolina, the opening of the tribal roll for the purposes of subparagraph (A). The advertisement shall specify the enrollment criteria and the deadline for enrollment.

(3) The review of the tribal roll of the Lumbee Tribe of Cheraw Indians of North Carolina shall be limited to verification of compliance with the membership criteria of the tribe as stated in the Lumbee Petition for Federal Acknowledgement filed with the Secretary by the tribe on December 17, 1987. The Secretary shall complete his review and verification of the tribal roll within the 12-month period beginning on the date on which the tribal roll is closed under paragraph (2).

JURISDICTION

SEC. 5. *(a)(1) The State of North Carolina shall exercise jurisdiction over—*

(A) all criminal offenses that are committed on, and

(B) all civil actions that arise on,

lands located within the State of North Carolina that are owned by, or held in trust by the United States for, the Lumbee Tribe of Cheraw Indians of North Carolina, any member of the Lumbee Tribe of Cheraw Indians of North Carolina, or any dependent Indian community of the Lumbee Tribe of Cheraw Indians of North Carolina.

(2) The Secretary of the Interior is authorized to accept on behalf of the United States, after consulting with the Attorney General of the United States, any transfer by the State of North Carolina to the United States of any portion of the jurisdiction of the State of North Carolina described in paragraph (1) pursuant to an agreement between the Lumbee Tribe of Cheraw Indians and the State of North Carolina. Such transfer of jurisdiction may not take effect until two years after the effective date of such agreement

(3) The provisions of this subsection shall not affect the application section 109 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1919).

(b) Section 5 of the Act of June 18, 1934 (Chapter 576; 25 U.S.C. 465), and the Act of April 11, 1970 (84 Stat. 120; 25 U.S.C. 488 et seq.), shall apply to the Lumbee Tribe of Cheraw Indians of North Carolina with respect to lands within the exterior boundaries of Robeson and adjoining counties, North Carolina.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. *(a) There are authorized to be appropriated such funds as may be necessary to carry out this Act.*

(b) In the first fiscal year in which funds are appropriated under this Act, the tribe's proposals for expenditures of such funds shall be submitted to the Select Committee on Indian Affairs of the Sen-

ate and the Committee on Natural Resources of the House of Representatives 60 calendar days prior to any expenditure of such funds by the tribe.

OVERSIGHT STATEMENT

The Committee on Natural Resources will have continuing responsibility for oversight of the implementation of H.R. 334 after its enactment. No reports or recommendations were received pursuant to rule X, clause 2(b)(2).

INFLATIONARY IMPACT; COST; AND BUDGET ACT COMPLIANCE

In the opinion of the Committee, enactment of H.R. 334 will have no inflationary impact on the national economy and will involve only costs that are reasonable in view of the benefits derived. The estimate of the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 2, 1993.

Hon. GEORGE MILLER,
Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 334, the Lumbee Recognition Act, as ordered reported by the House Committee on Natural Resources on June 16, 1993. CBO estimates that H.R. 334 could result in additional costs to the federal government of $80 million to $100 million a year, if the necessary funds are appropriated. Enactment of H.R. 334 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply. Also, enactment of H.R. 334 would result in no cost to state or local governments.

H.R. 334 would grant federal recognition to the Lumbee Tribe of Cheraw Indians of North Carolina. The bill would make the tribe and its members eligible for all services and benefits provided to federally recognized Indians upon the appropriation of funds for these purposes.

The bill would require the Secretary of the Interior and the Secretary of Health and Human Services to work with the tribe to develop a needs assessment and budget for services necessary for the tribe. It also would require the tribe to organize and adopt a constitution and by-laws, and would direct the Secretary of the Interior to assist the tribe in this effort. The bill would require the tribal roll to be open for a 180-day period before adopting a constitution. H.R. 334 would authorize the appropriation of funds necessary to carry out the provisions of the bill.

CBO estimates that the average annual cost of services and benefits provided nationally to American Indians and Alaska Natives is about $3,500 per tribal member. We expect that the cost to the federal government to provide services to the Lumbee Tribe would be less than the national average, however, since the Lumbee Tribe is recognized by the state of North Carolina. As state-recognized American Indians, members of the Lumbee Tribe already receive some federal services and benefits, including job training and edu-

cation funding. As a result, CBO anticipates that the average annual cost of providing additional services to members of the Lumbee tribe could be between $2,000 and $2,500 per member. We therefore estimate that H.R. 334 could result in annual costs to the federal government of $80 million to $100 million annually, assuming the necessary funds are appropriated. CBO's estimate is based on a tribal enrollment of about 40,000 members.

The exact amount of the additional cost to the federal government resulting from H.R. 334 is difficult to predict because the nature of services and programs provided would be negotiated by the tribe and the Secretary of the Interior and would be based on the specific needs of the tribe. The cost of some services would be low (or zero) because the tribe has no land base and thus has no need for certain types of services (for example, real estate services or reservation law enforcement), or because the tribe already receives such services. However, the tribe may be able to negotiate the provision of other services at a higher than average rate.

Based on information from federal agencies, CBO estimates that it would cost between $100,000 and $150,000 to review and verify the tribal roll as required in section 3 of the bill.

If you wish further details on this estimate, we will be pleased to provide them. The staff contact is Patricia Conroy, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER, *Director*.

DISSENTING VIEWS[1]

H.R. 334[1]—the Lumbee Indian Recognition Act—presents this Committee, and ultimately the Congress, with one of the most difficult contemporary public policy issues in Indian Affairs: In which cases, if any, should we exercise our authority to extend federal recognition to a group seeking formal acknowledgement as an Indian tribe outside the established administrative process? Since 1899 we have been asked repeatedly to consider acknowledgement of the Lumbee[2] Indians of Robeson County, North Carolina, in one form or another.[3] So far, we have declined to exercise that authority in their regard. The majority presents no compelling justification why we should depart from that well-reasoned course now.

I. SUMMARY

H.R. 334 would legislatively extend federal recognition to the Lumbee Indians of North Carolina, thereby circumventing the established Bureau of Indian Affairs administrative procedure through which all other non-recognized Indian groups must pass. This procedure—called the Federal Acknowledgement Process (FAP)—was established in 1978 at the request of the American Indian Policy Review Commission, the National Congress of American Indians, and members of both the House and Senate, all of whom decried the arbitrary and excessively political approaches to tribal recognition then prevalent in Congress and the lack of a systematic and uniform set of criteria in this body to determine tribal status. Under the FAP, tribes seeking federal recognition must submit a detailed petition which is then evaluated by a team of Bureau of Indian Affairs (BIA) anthropologists, ethnohistorians, and other experts. The BIA subsequently establishes whether the petitioner meets seven criteria used to determine if the group is indeed an Indian tribe. This recognition of tribal status is a prerequisite to the tribe's and its members' receipt of the services offered by the BIA.

The Lumbee and their supporters, however, argue that they should be allowed to bypass these regulations and that Congress

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[1] Despite a draconian new rule on the filing of committee reports, compare Comm. on Natural Resources, Rule XI, 103d Cong. (1993) with Comm. on Interior and Insular Affairs, Rule X, 102d Cong. (1991), for the purposes of this report the majority was accommodating enough to accede at mark-up to reinstating the old rule giving us three days to review and respond to their preliminary draft report. However, after that period has run the majority is still free to redraft their report without affording us an opportunity to address any new position they may take. Thus we note that although we have kept direct references to the majority report to a minimum—see infra, for example, notes 160 & 204—where they do occur we cannot guarantee that the referenced portions will actually appear in the majority's final published report.

[2] In accordance with common practice, the term "Lumbee" will be used as the singular, plural, and adjectival form of the noun.

[3] See, e.g., H.R. 334, 103d Cong., 1st Sess. (1993); H.R. 1426, 102d Cong., 1st Sess. (1991); H.R. 2335, 101st Cong., 2d Sess. (1989); H.R. 5042, 100th Cong., 2d Sess. (1988); H.R. 4656, 84th Cong., 2d Sess. (1955); H.R. 5365, 73d Cong., 1st Sess. (1933); H.R. 8083, 68th Cong., 1st Sess. (1924); H.R. 19036, 61st Cong., 2d Sess. (1910); H.R. 4009, 56th Cong., 1st Sess. (1899).

should recognize them legislatively. First, they contend that prior legislation—the 1956 Lumbee Act—both recognized the group and precluded them from applying for recognition under the FAP. Second, they maintain that they are justified in bypassing the FAP because the process is cumbersome and ineffective. Finally, they asset that passage of the bill is consistent with recent actions of Congress in enacting recognition legislation.

Their arguments, though, are tenuous at best, and actually militate against this bill and in favor of less precipitous legislative solutions. The 1956 Lumbee Act did not in any way extend federal recognition to the Lumbee. Rather, it was merely a commemorative bill designating this group of Indians by a particular name. This interpretation is borne out by the wording of the Act itself, the legislative history, contemporary news reports, and other authorities. While the Act can be read as precluding the Lumbee from petitioning for recognition, the logical solution to that impediment—and one requested by past solicitors at the Interior Department—is to amend the Act to remove the bar rather than to bypass the FAP completely.

The second argument, that the Lumbee should be allowed to bypass the process because it is too cumbersome and backlogged, is equally specious. While the BIA recognition process is in need of repair, it is not as feckless as the majority would have us believe. There is only a backlog of—at most—seven petitions, not the 120 cases often cited; and while we concede that the process is imperfect, the most rational solution is to fix it. Bypassing the process only ignores the problem, undermines the role of the BIA, and is unfair to both the recognized and unrecognized tribes.

Finally, the Lumbee assert that approval of this bill is simply consistent with congressional precedent. The examples of legislation they cite to support this proposition, however, are either not recognition legislation or are easily distinguishable from the Lumbee case and therefore of no procedential value.

The Department of the Interior, Bureau of Indian Affairs, and the overwhelming majority of Indian tribes strongly oppose H.R. 334. Similarly, for all the preceding reasons, we cannot support H.R. 334 in its present form.

II. Federal Recognition

So that the members of this Committee, and of the rest of the House, can fully understand the magnitude of the issues presented by H.R. 334, a brief background on the importance of federal recognition is in order. The question of whether a Native American group constitutes an Indian tribe is one of immense significance in the field of federal Indian law. Because Congress' power to legislate for the benefit of Indians is limited by the Constitution to Indian tribes,[4] for most federal purposes it is not enough that an individual simply be an Indian to receive the protections, services, and benefits offered to Indians; rather, the individual must also be a member of an Indian tribe.[5] Though it might seem to the layperson that there is only one kind of Indian tribe, for purposes of Amer-

[4] U.S. Const., art. I, § 8, cl. 3; cf. U.S. Const., art. II, § 2, cl. 2.
[5] See e.g., *Epps* v. *Andrus*, 611 F.2d 915, 918 (1st Cir. 1979) (per curiam).

ican Indian law there are actually two—those that are recognized by the federal government and those that are not.[6]

"Recognized" is more than a simple adjective; it is a legal term of art. It means that the government acknowledges as a matter of law that a particular Native American group is a tribe by conferring a specific legal status on that group, thus bringing it within Congress' legislative powers. This federal recognition is no minor step. A formal, political act, it permanently establishes a government-to-government relationship between the United States and the recognized tribe as a "domestic dependant nation,"[7] and imposes on the government a fiduciary trust relationship to the tribe and its members. Concomitantly, it institutionalizes the tribe's quasi-sovereign status,[8] along with all the powers accompanying that status such as the power to tax,[9] and to establish a separate judiciary.[10] Finally, it imposes upon the Secretary of the Interior specific obligations to provide a panoply of benefits and services to the tribe and its members.[11] In other words, unequivocal federal recognition of tribal status is a prerequisite to receiving the services provided by the Department of the Interior's Bureau of Indian Affairs (BIA),[12] and establishes tribal status for all federal purposes.

III. The History of the Recognition Process

Prior to the 1930's, federal recognition of tribes took many forms: congressionally-sanctioned treaties, court cases, administrative decisions, and executive orders—and "was essentially sporadic, or, at best * * * plagued with all sorts of pitfalls and a lack of a systematic approach * * * ."[13] Instead of a process based on a well-reasoned set of standardized criteria, the granting of recognition was, by all accounts, nothing better than arbitrary and excessively political. For example, in 1851 the United States entered into a series of eighteen treaties (the "Barbour Treaties") with several California tribes providing for the relinquishment of all aboriginal land claims in California in exchange for 8.5 million acres of territory and other

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[6] Nonrecognized Native American groups or tribes can further be broken down into three basic subgroups. The first are those that have never been recognized, like Native Hawaiians. See generally Houghton, "An Argument for Indian Status for Native Hawaiians—The Discovery of a Lost Tribe," 14 American Indian L. Rev. 1 (1988). The second consists of those groups that were once recognized, but have had their tribal status terminated by Congress. See, e.g., Pub. L. No. 86–322, 73 Stat. 592 (Sept. 21, 1959) (Catawba Tribe); Pub. L. No. 85–91, 71 Stat. 283 (July 10, 1957) (Coyote Valley Ranch Band); Pub. L. No. 83–399, 68 Stat. 250 (June 17, 1954) (Mixed Blood Utes). The third are those that have applied for recognition, but have been turned down. See e.g., 50 Fed. Reg. 38047 (1985) (Northwest Cherokee Wolf Band; Red Clay Intertribal Indian Band); 50 Fed. Reg. 18746 (1985) (Tchinouk Indians of Oregon).

[7] *Cherokee Nation* v. *Georgia*, U.S. (5 Pet.) 1, 14 (1831).

[8] See *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515, 557–62 (1832).

[9] See *Warren Trading Post* v. *Arizona Tax Commission*, 380 U.S. 685 (1965); *The Kansas Indians*, 72 U.S. (5 Wall.) 737 (1866); *Buster* v. *Wright*, 135 F.2d 947 (8th Cir. 1905).

[10] See *Ex parte Crow Dog*, 109 U.S. 556 (1883); *Iron Crow* v. *Oglala Sioux Tribe*, 231 F.2d 89 (8th Cir. 1956).

[11] See, e.g., 43 U.S.C. §1457 (1988); 25 U.S.C. §2 (1988).

[12] See, e.g., 25 C.F.R. §20 (1990) (Financial Assistance and Social Services Program); 25 C.F.R. §101 (1990) (Loans to Indians Program); 25 C.F.R. §256 (1990) (Housing Improvement Program).

[13] S. Hrg. No. 98–690, 98th Cong., 1st Sess. 2 (1983) (testimony of John Fritz, Deputy Ass't Sec. for Indian Affairs).

goods and supplies.[14] These treaties would have formed the basis for the federal recognition of these groups, but because of pressure from the California congressional delegation the treaties were never ratified—in fact, they were purposefully hidden for decades.[15] No one informed the tribes of the failure of ratification, and white settlers proceeded to occupy their lands anyway.[16]

In 1871, Congress provided that no tribe could thereafter be recognized as an independent sovereign entity with which the United States could conclude a treaty.[17] Similarly, in 1919 Congress retired another method of recognizing an indigenous group as a tribe when it prohibited the President from creating reservations by executive order.[18] Thus, by the early 1900's, this curtailment of available avenues of dealing with the tribes, coupled with the growing involvement of the BIA in managing the daily affairs of the tribes, meant that Congress had effectively delegated—either explicitly or implicitly—much of its authority over Indian matters to the BIA.[19]

Those agencies, however, continued to deal with the tribes in a somewhat desultory fashion. The early principles of administrative recognition were based on a Supreme Court decision which offered a rather vague guide to defining a tribe.[20] In an effort to remedy this disorganization, in 1942 the Solicitor of the BIA, Felix Cohen, first proposed a workable set of criteria designed to provide a uniform framework for tribal recognition.[21] The so-called "Cohen Criteria" considered both the tribal character of the native group and any previous federal actions treating it as a tribe. However, application of the criteria proved to be no less haphazard than the process they replaced.[22] Besides the Cohen criteria, the BIA relied on a patchwork mixture of court opinions, limited statutory guidance, treaty law, and evolving departmental policy and practice.[23] Thus by 1975, faced with a steadily increasing number of groups seeking recognition, the BIA held in abeyance further acknowledgement decisions pending the development of regulations for a systematic and uniform procedure to recognize Indian tribes.

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[14] See Smithsonian Institution, 8 Handbook of North American Indians 701–02 (William C. Sturtevant ed. 1978); Bureau of Indian Aff., Dep't of Interior, Indians of California 8–12 (1968). For a listing of those treaties, see H.R. 2144, 102d Cong., 1st Sess. 9–10 (Apr. 30, 1991).

[15] See H.R. Hrg. No. 102–77, 102d Cong., 2d Sess. 41–42, 171–72, 186 (May 28, 1992) (H.R. 2144); 8 Handbook of North American Indians, supra note 14, at 702–03; H.R. Hrg. No. 102–59, 102d Cong., 1st Sess. 41, 42 (Oct. 10, 1991) (H.R. 2144).

[16] Id. at 41–42.

[17] Act of Mar. 3, 1871, c. 120 § 1, 16 Stat. 566 (codified at 25 U.S.C. § 71 (1988)).

[18] Act of June 30, 1919, ch. 4, § 27, 41 Stat. 34 (codified at 43 U.S.C. § 150 (1988)).

[19] During the lengthy debates on Lumbee recognition, and recognition in general, there have been those who have intimated that the FAP process is a usurpation of Congressional authority. See, e.g., Joint Cong. Hrg. No. 102–JH1, 102d Cong., 1st Sess. 53 (August 1, 1991) (statement of Mr. Gejdenson of Connecticut); H.R. Hrg. No. 102–79, 102d Cong., 2d Sess. 56 (1992) (statement of Henry Sockbeson). This position is nothing more than a canard. Whether directly or indirectly, we have delegated that authority to the Bureau, see 5 U.S.C. § 301 (1988); 25 U.S.C. §§ 2, 9 (1988); Dep't of Interior, 2 Opinions of the Solicitor, Indian Affairs 1211 (1974) (Power of the Secretary to Delegate Functions to the Heads of Bureaus); *United States* v. *Midwest Oil Co.*, 236 U.S. 459, 472–73 (1915) ("in determining . . . the existence of a power, weight shall be given to the usage itself, even when the validity of the practice is the subject of investigation"); and no one has seriously sought to challenge that position.

[20] See *Montoya* v. *United States*, 180 U.S. 261, 266 (1901) (defining a tribe as a "body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory").

[21] See Felix S. Cohen, Handbook on Federal Indian Law 268–72 (1942) (Michie Co. reprint 1989).

[22] See Note, "The Imprimatur of Recognition: American Indian Tribes and the Federal Acknowledgement Process," 66 Wash. L. Rev. 209, 211 (Jan. 1991).

[23] Id. at 211.

About this same time the congressionally-established American Indian Policy Review Commission (AIPRC) proposed the formation of a firm legal foundation for the establishment and recognition of tribal relationships with the United States, and the adoption of a "valid and consistent set of factors applied to every Indian tribal group * * *"[24] Joining the chorus for standardization was the National Congress of American Indians, which called for a "valid and consistent set of criteria applied to every group which petitions for recognition * * * based on ethnological, historical, legal, and political evidence." Senator James Abourezk, AIRPC's chairman, took the issue to the floor of the Senate, and introduced legislation calling for the establishment of an office in the BIA to handle recognition petitions in a uniform way.[25]

In 1978, the Interior Department, after exhaustive consultations with Indian country, established procedures to provide a uniform approach to the recognition process. Called the Federal Acknowledgement Process (FAP), the regulations set forth seven criteria a petitioning group must meet to be deemed a "recognized" tribe.[26] Under the criteria, based in part on Cohen's model, for a group to be recognized as a tribe it must:

(a) establish that it has been identified from historical times to the present on a substantially continuous basis as "American Indian" or "aboriginal;"

(b) establish that a substantial portion of the group inhabits a specific area or lives in a community viewed as . . . Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area;

(c) furnish a statement of facts which establishes that the group has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present;

(d) furnish a copy of the group's present governing document * * *

(e) furnish a list of all known members, and show that the membership consists of individuals who have established descendency from a tribe that existed historically or from historical tribes that combined and functioned as a single autonomous entity;

(f) establish that the membership is composed principally of persons who are not members of any other North American Indian tribe;

(g) establish that neither the group nor its members are the subject of congressional legislation that has expressly terminated or forbidden the federal relationship.

The BIA FAP office is staffed by two teams of professionals including historians, genealogists, ethnologists and anthropologists. These teams do exhaustive research on the petitions they receive, and examine such factors as Indian identity and community, as well as political and cultural cohesiveness. Once a petition is re-

[24] See Task Force Ten, American Indian Policy Rev. Comm'n, Final Report on Terminated and Nonfederally Recognized Indians, 94th Cong., 2d Sess. (1976).

[25] See 123 Cong. Rec. 39277 (Dec. 15, 1977).

[26] See 25 C.F.R. § 83 (1990) (originally promulgated as 25 C.F.R. § 54 (1978)).

ceive it is reviewed for any obvious deficiencies. These are noted for the tribe, which is given the opportunity to supply additional material to supplement its petition. The petitions are then placed on active consideration in the order received. Since 1978, eight tribes have been administratively recognized, fourteen have been denied recognition, one has had a proposed negative finding and another a proposed positive finding of tribal status.[27] Several others, including the Lumbee, have filed petitions which are in various stages of movement through the FAP process.

IV. The Lumbee of North Carolina

H.R. 334 seeks to legislatively extend federal recognition to a group of Indians in North Carolina, completely bypassing the established BIA FAP process. The bill's proponents take great pains to posit that the Lumbee meet all the criteria used by the BIA in determining tribal status. However, while the proponents' remarks on this bill, as well as the majority's report, focus extensively on their highly subjective judgments about whether the Lumbee people meet these criteria, we decline to engage in debate over this emotional topic since it is largely irrelevant in terms of our position on this legislation. We do not argue that the Lumbee people are not of Indian descent; moreover, we make no judgments on the question of their tribal status, or the adequacy of their recognition petition. Rather, we believe strongly that neither the members of this Committee, nor of the full House, are in a position to make a rational and informed decision as to whether this group constitutes a federally-recognizable tribe.

We will not repeat in extenso the chronicle of the people now called the Lumbee; it is adequately set forth in this and previous committee reports and accompanying appendices. However, mindful that "the intricacies and peculiarities of Indian law demand an appreciation of history,"[28] we feel constrained to point out a few salient historical facts with which the majority is either unfamiliar or which it chooses to gloss over in its headlong rush towards passage of this legislation.

Foremost among these: While neither side in this debate questions the group's Indian descent, the exact origin and tribal derivation of the Lumbee has been the subject of considerable dispute and uncertainty,[29] and since the 19th Century the Lumbee and their predecessors have sought an identifying link with some historic tribe. Unlike most other tribes, it is inaccurate to refer to a continuously existing tribe of "Lumbee;" that name is a modern creation which was only adopted in 1956, and is the most recent in a long line of appellations belonging to this group. It is important to bear this fact in mind because proponents of the bill, as well as some contemporary commentators, tend to obscure this fact and absorb the long and complex history of Robeson County Indians into a single, supposedly "Lumbee," history.[30]

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[27] See infra notes 171 to 191 and accompanying text.

[28] *South Carolina* v. *Catawba Indian Tribe*, 476 U.S. 488, 511 (1986) (Blackmun, J., dissenting).

[29] See H.R. Rep. No. 102–215, 102d Cong., 1st Sess. 3, ¶2 (1991); H.R. Rep. No. 101–685, 101st Cong., 2d Sess. 5 (1990).

[30] See e.g., Joseph M. Smith, The Lumbee Methodists, Getting to Know Them: A Folk History 2, 4, 5 (1990) (During the War of 1812 "the Lumbee rallied when the call went out for volun-

The story of how the progenitors of the Lumbee came to live in this area of North Carolina is a multifarious one. In fact, there are almost as many theories as there are theorists. Up until the 1920's, the most persistent tradition among the Indians in Robeson County was that they were descended primarily from an Iroquoian group called the Croatans. This theory, though highly conjectural, is as follows.[31] In 1585, Sir Walter Raleigh established an English colony under Gov. John White on Roanoke Island in what later became North Carolina. In August of that year, White departed for England for supplies, but was prevented from returning to Roanoke for two years by a variety of circumstances. When he finally arrived at the colony, however, he found the settlement deserted; no physical trace of the colonists was found.

The only clue to their whereabouts were the letters "C.R.O" and the word "Croatoan" carved in a tree. From this it was surmised that the colonists fled Roanoke for some reason, and removed to the nearby island of Croatoan which was inhabited by a friendly Indian tribe. There, according to the theory, they intermarried with the Indians, and the tribe eventually migrated to the southwest to the area of present-day Robeson County. The theory is lent some credence by reports of early 18th Century settlers in the area of the Lumber River who noted finding a large group of Indians—some with marked Caucasian features such as grey-blue eyes—speaking English, tilling the soil, "and practicing the arts of civilized life." [32] In addition, many of the surnames of Indians resident in the county match those of Roanoke colonists.

This view was the most widely-accepted among both the Indians and their neighbors for more than 100 years.[33] It was even officially echood by the Department of the Interior, which concluded:

> [T]he Indians originally settled in Robeson and adjoining counties * * * were an amalgamation of the Hatteras Indians with [Raleigh]'s lost colony; the present Indians are their descendants with a further amalgamation with the early Scotch and Scotch-Irish settlers, such amalgamation continuing down to the present time, together with a small degree of amalgamation with other races.[34]

The "Lost Colony" theory has, however, since fallen into disrepute. Since the late 1930's, the most generally accepted supposition is that the ancestors of the Lumbee—

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teers"; "The Lumbee watched the developments after 1835 with uneasiness"). Even the rather recent "Encyclopedia of Southern Culture" makes a series of such references. For example: "The Lumbee, a nonreservation people, were free prior to 1835. . . . The Lumbee were also deprived of their political and civil rights because they were not white and were regarded as dangerous. A number of Lumbees served in the Continental Army during the Revolutionary War and fought in the War of 1812, but during the Civil War the Lumbee were denied the right to fight as soldiers.".

Charles R. Wilson & William Ferris, eds., Encyclopedia of Southern Culture 436 (1989).

[31] For a full treatment of this theory, see generally Hamilton McMillan, Sir Walter Raleigh's Lost Colony (1888), reprinted in "Indians of North Carolina: A Report on Condition and Tribal Rights of the Indians of Robeson and Adjoining Counties of North Carolina," S. Doc. No. 677, 63d Cong., 2d Sess. 41–57 (1915) (Report by O.M. McPherson); Stephen B. Weeks, "The Lost Colony of Roanoke: Its Fate and Survival" (1891), reprinted in S. Doc. No. 677, supra, at 58–68.

[32] S. Doc. No. 677, supra note 31, at 48 (quoting McMillan).

[33] See Karen Blu, The Lumbee Problem: The Making of an American Indian People 135–36 (1980); Lew Barton, The Most Ironic Story in American History xi–xii, 1–4, 22–50 (1967).

[34] S. Doc. No. 677, supra note 31, at 17.

> had many different "tribal" affiliations, originally spoke several different Indian languages, and had one common goal—to find refuge from White-introduced diseases, wars, and the settlers who were sweeping through North and South Carolina. The swamps of what was to be Robeson County combined with the county's uncertain colonial status attracted people of Indian descent with a promise of protection.
>
> There were massive dislocations of Indian populations in areas to the north and south of Robeson County. In 1711, the Tuscarora War to the north could have driven some Indians to seek refuge in the southern swamps on the border between the Carolinas. Later, in the 1730's, a smallpox epidemic raged through South Carolina and may have sent those fleeing it northward into the swamps. That Robeson [County] provided a refuge for people—Indian, White and Black—who sought to avoid highly organized government is also likely.
>
> The county is located in a section of North Carolina that was, between 1712 and 1776, involved in a border dispute between the colonies of North and South Carolina. . . . Many White colonists would have hesitated to settle there because of the confusion about which colony would be legally responsible for the region, and therefore the area would provide an ideal refuge for those seeking to avoid large all-White settlements. The remnant groups who found safety in Robeson County intermarried, amalgamating into a single people that included some non-Indian[s].* * *[35]

This amalgamation, which consisted of several different Siouan coastal tribes, has been accepted by the present Lumbee as the beginnings of their group. For example, in 1955, before this Committee, a representative of the Lumbee stated that the group is "an admixture of seven different tribes of Indians including the Cherokee, Tuscarora, Hatteras, Pamlico and Croatan—about seven tribes were mixed with them and intermarried with the first colonists."[36]

This change in theories over the years has resulted in a series of official name changes for the Robeson County Indians as they sought to conform legislatively to whichever view was prevalent at the time. In 1885, the State of North Carolina designated a group of Indians in and around Robeson County—the ancestors of the present Lumbee—as "Croatan Indians."[37] By 1911, however, the designation had been popularly shortened to "Cro" and was used by non-Indians as a racial pejorative which the Indians found extremely objectionable.[38] In addition, the term was one not recog-

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[35] K. Blu, supra note 33, at 43–44.

[36] Id. at 18 (quoting statement of Rev. D.F. Lowery).

[37] [1885] N.C. Sess. Laws ch. 51. The name was chosen based on the "Lost Colony" theory, discussed supra. It is important to note that although the 1855 Act designated the group as Croatan Indians—a place-based designation—it made clear that the General Assembly was not declaring the group to be composed of Croatans. See H.R. Rep. 101–685, supra note 29, at 2.

[38] See Lumbee River Legal Serv., 1 Lumbee Petition for Federal Acknowledgement 51–52 (1987) [hereinafter Lumbee Petition]; K. Blu, supra note 33, at 32, 78; G. Johnson, "Personality in a White-Indian-Negro Community," 4:4 Am. Sociological. Rev. 520 (1939); E. Hancock, "A Sociological Study of the Tri-racial Community in Robeson County, North Carolina" 25–6 (1935) (unpublished master's thesis, Univ. of North Carolina at Chapel Hill).

nized by historians, ethnologists or bureaucrats in the federal government; [i]t "had no historical precendent and was based on the name of a place, not the name of a people."[39] Therefore in that year, at the groups request, the state legislature changed the group's name to "Indians of Robeson County."[40] That change, however, "pleased nobody and settled nothing,"[41] since in the opinion of many Lumbee it served only to obscure further the claimed origins of the group. Consequently, in 1913, again at the group's request and despite the vehement protests of the federal-recognized Eastern Cherokee Tribe in the western part of the state, the name was changed to "Cherokee Indians of Robeson County."[42]

From 1910 to the 1930's, supporters of the group introduced several bills in Congress to give them a federal designation variously proposed as "Cherokee Indians of Robeson and adjoining counties,"[43] "Southeastern Cherokee," "Cheraw," and "Siouan Indians of the Lumber River."[44] In 1953, they finally settled on adopting a derivation of the name of the Lumber (Lumbee) River, which flows through Robeson County, as their self-designation.[45] In justification for the change, one of the group's leaders wrote:

> The first white settlers found a large tribe of Indians living on the Lumbee River in what is now Robeson County—a mixture of colonial blood with Indian blood, not only of [Raleigh's] colony; but, with other colonies following and with many tribes of Indians; hence, we haven't any right to be called any one of the various tribal names; but, should take the geographical name, which is Lumbee Indians, because we were discovered on the Lumbee River.[46]

At no point over all these years, however, have state or federal statutes even remotely referenced the Cheraw—note the absence of that name from the preceding list of progenitor tribes given by Dr. Lowery—but we are now told by the Lumbee, after more than 100 years of being informed otherwise, that this group is the principal historical tribe from which they really descend.[47] However, a close examination of the issue calls this assumption into some question.

In 1914, at the direction of the Senate, the Secretary of the Interior sent Special Indian Agent O.M. McPherson to North Carolina

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39. Blu, supra note 33, at 77–78.

40 [1911] N.C. Sess. Laws ch. 215; *see* 1 Lumbee Petition, supra *note 33, at 52.*

41 Adolph L. Dial & David K. Eliades, "The Only Land I Know: A History of the Lumbee Indians" 94 (1975).

42 [1913] N.C. Sess. Laws ch. 123; see K. Blu, supra note 33, at 80; 1 Lumbee Petition, supra note 38, at 52. An earlier attempt had been made to adopt this Cherokee label. In 1910, "some of the leaders of the Croatans appeared before the state legislature with a bill authorizing or allowing them to be part of the incorporated [federally-recognized] band of Eastern Cherokees. The Cherokees disclaiming any relation to these people and believing the bill to be a scheme on the part of the Croatans to obtain a pecuniary interest in their landed possession, very strongly opposed the measure and it failed to become law."

Letter from Charles Pierce, Supervisor of Indian Schools, Fifth Dist., to Commissioner of Indian Affairs (Mar. 2, 1912).

43 See H.R. Rep. No. 826, 68th Cong., 1st Sess. 1 (1924).

44 See S. Rep. No. 204, 73d Cong., 2d Sess. 1–6 (1934); H.R. Rep. No. 1752, 73d Cong., 2d Sess. 1 (1934).

45 [1953] N.C. SESS. LAWS ch. 874; *see* J. Smith, supra note 30, at 75; "Raleigh News and Observer" (May 12, 1953); "Raleigh News and Observer" (Feb. 21, 1926).

46 D.F. Lowery, "No Mystery (Lumbee Indians)," "The State" 20(29):24 (Dec. 20, 1952); see 1 Lumbee Petition, supra note 31, at 93.

47 See H.R. 334, supra note 3, at 2 ("the Lumbee . . . are descendants of coastal North Carolina Indian tribes, principally Cheraw"). This is so even though the group's most persistent oral traditions maintain otherwise.

to investigate "the condition and tribal rights of the Indians of Robeson and adjoining counties. * * *"[48] Mr. McPherson returned his exhaustive report—including over 230 pages of exhibits—to the Senate in January, 1915. The proponents of Lumbee recognition state that this report unequivocally concluded that the Lumbee are descended principally from the Cheraw Tribe.[49] This characterization of McPherson's report, however, is not quite accurate. McPherson noted that the Cheraw, being subject to attacks from Iroquoian tribes, became incorporated with the Catawbas of South Carolina between 1726 and 1739.[50] The last historical notice of them was in 1768, when their *remnant,* reduced by war and disease, were still living with the Catawbas."[51] These statements would seem to argue against an assumption that the report concludes that the Cheraw were the principal ancestors of the Lumbee. The closest McPherson came to establishing a Lumbee-Cheraw connection was the following: "It is not improbable, however, that there was some degree of amalgamation between the Indians residing on the Lumber River and the Cheraws who were their nearest neighbors."[52]

This subsummation of the Cheraw into the Catawba Nation in the early 1700's—which in our view greatly diminishes the force of the Lumbee Cheraw claim—is substantiated in a number of contemporaneous and modern sources. Among the former: James Adair, an Englishman who resided with the Catawba in 1743, stated that the Catawba consisted of up to twenty different constituent groups; among the eight tribes explicitly cited by Adair were the Cheraw.[53] A map drawn on deerskin by a Catawba chief in 1724 shows the "Charra" as a group residing with the Catawba.[54] Another map, drawn by the trader John Evans in 1756, shows the location of the "Charraw Town" in the Catawba lands.[55]

In addition, all of the modern treatments of the Catawbas with which we are familiar indicate that the Cheraw were one of the many tribes subsumed into the Catawba. For example, Dr. Jane Brown notes that "[o]f the twenty-two tribes which formed the Catawba Nation as early as 1743, the most important * * * were: The Catawbas proper * * * the Cheraws * * * the Sugaree * * * the Waxhaws * * * the Congarees, the Santees * * * the Pedees * * * the Waterees * * * and the Wateree-Chickannes * * * *"[56] These groups all merged with the Catawba, and "[a]s a result of these tribal mergers, the Catawba Nation became a melting pot of peoples. * * * Cheraws * * * and other migrants gradually lost their own identity and came to think of themselves as Cataw-

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[48] S. Res. No. 410, 63d Cong., 2d sess. (1914); *See* S. Doc. No. 677, supra note 31 at 5.
[49] See, e.g., H.R. Rep. No. 102–215, supra note 29, at 3; S. Rep. No. 100–579, 100th Cong., 2d Sess. 2 (1988) (same).
[50] S. Doc. No. 677, supra note 31, at 23.
[51] *Id.* (emphasis added).
[52] *Id.*
[53] James Adair, History of the American Indians ix, 235–36 (1953 reprint) (originally published in London by E & C Dilly, 1775); see H.R. Hrg. No. 96–17, 96th Cong., 1st Sess. 137 (1979) (reprinting Miller et al., "A History of the Catawba Tribe and its Reservation Lands: 1540–1959" 2–3 & n.2 (no year of publication)).
[54] James H. Merrell, The Catawbas 33 (1989) (with photo); James H. Merrell, The Indians' New World 93 (1989) [hereinafter 1989 Merrell].
[55] The Catawbas, supra note 54, at 56 (reprinting map from South Carolina Department of Archives and History); 1989 Merrell, supra note 54, at 163 (same).
[56] See, e.g., Douglas S. Brown, The Catawba Indians: The People of The River 3 (1966).

bas."[57] Secretary of the Interior Harold Ickes, citing a Smithsonian report, noted that the remnants of the Cheraw "became incorporated with the Catawba of South Carolina" between 1726 and 1739.[58]

We are not the first to question the validity of the Lumbee-Cheraw connection. In 1933, a bill introduced in the Senate would have provided for the enrollment of the group as Cheraw Indians.[59] The Secretary of the Interior objected to the use of the term Cheraw," however, and suggested that they be designated Siouan Indians instead.[60] This change was prompted by a report from Dr. J.R. Swanton, a Smithsonian anthropologist, who concluded that the group is:[60]

> descended from a considerable number of small tribes, *of which the Cheraw were only one,* and since the greater part of these, like the Cheraw, belonged to what is called the Siouan linguistic family, it would be more nearly correct to designate them Siouan Indians of Lumber River, from this fact and the name of the stream about which the greater number of them are settled.[61]

The bill was amended in committee to reflect that request.[62]

The report by Swanton—often cited by the Lumbee as an authority on the subject[63]—is instructive as to the true nature of the Lumbee's relationship to the Cheraw. It noted that the Lumbee are descended "from certain Siouan tribes of which the most prominent were the Cheraw and Keyauwee, but [] probably included as well remnants of the Eno, and Shakori, and very likely some of the coastal groups such as the Waccamaw and Cape Fear."[64] Swanton went on to state that "[a]lthough there is some reason to think that the Keyauwee tribe actually contributed more blood to the Robeson County Indians than any other,"[65] he preferred the use of the term "Cheraw" simply because whereas the Keyauwee name was not widely known, "that the Cheraw has been familiar to historians, geographers, and anthropologists in one form or another since the time of DeSoto * * *."[66] In other words, the choice of the Cheraw was apparently made in large part for reasons of academic ease rather than historical reality.

In a later, seminal work, Swanton reiterated his belief that the Keyauwee, and not the Cheraw, were the main predecessors of the Robeson County Indians. He noted that between 1726 and 1739, the remnants of the Cheraw were incorporated into the Catawba Tribe, and that they still resided with the latter group as of 1768,[67] by which time the Lumbee claim their ancestors were already established in North Carolina's Robeson County. He estimated their

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[57] 1989 Merrell, supra note 54, at 52–53.
[58] S. Rep. No. 204, 73d Cong., 2d Sess. 2 (1934) citing Bureau of American Ethnology, Smithsonian Inst., Bulletin No. 30, Part 1).
[59] See S. Rep. No. 204, supra note 58, at 1.
[60] *Id.* at 1–6; 1 Lumbee Petition, supra note 38, at 67–70 (reprinting Swanton's report).
[61] H.R. Rep. No. 1752, supra note 44, at 6.
[62] See S. Rep. No. 204, supra note 58, at 1.
[63] See, e.g., 1 Lumbee Petition, supra note, 38, at 70.
[64] S. Rep. No. 204, supra note 58, at 6; 1 Lumbee Petition, supra note 38, at 70.
[65] Id.
[66] Id.
[67] John R. Swanton, Indian Tribes of North America 76 (1952) (Smithsonian Institution publication).

numbers at that time to be between fifty and sixty individuals. He went on to state that the Keyauwee, while also eventually settling with the Catawba, left descendants "among the Robeson County Indians."[68]

In 1989, the head of the BIA's Bureau of Acknowledgement and Research questioned the adequacy of the Lumbees' proof underlying their assertion of Cheraw descent. He testified that—

> [t]he Lumbee petition submitted to the BIA in 1987 claims to link the group to the Cheraw Indians. The documents presented in the petition do not support [this] theory * * *. These documents have been misinterpreted in the Lumbee petition. Their real meanings have more to do with the colonial history of North and South Carolina than with the existence of any specific tribal group in the area in which the modern Lumbee live.[69]

Even the Lumbees' own consulting anthropologists have previously been somewhat lukewarm in their support for the proposition that the Lumbee are principally descended from the Cheraw. For example, one has stated the "the Cheraw are probable ancestors in the early 18th century. It does not really matter, however * * *."[70] In fact, the case for Cheraw ancestry is not one of conclusion by proof, but of conclusion by supposition and process of elimination.[71] All of these sources, from Adair onwards, cast a considerable pall over the Lumbee assertion that "the proof in this case [of descent from the Cheraw] is supported by the fact that no disconfirming evidence exists,"[72] and over their anthropologists statements that "[t]here is no evidence to the contrary."[73]

Given the very small numbers of Cheraws left after the ravages of disease and the early colonial Indian wars, what seems to be the prevailing view that the group was subsumed into the Catawba Nation to the south, and the lack of concrete proof, we find it difficult to fathom how the Cheraw could have been the principal forbearers of the Lumbee. In addition, this change in the asserted origins of the Lumbee over the years has not been a minor one. Since the 1860's, the group has claimed "Croatan," then Cherokee, then Cheraw descent.[74] This progression was not one from one correlate tribe to another, such as from Mohawk to Oneida to Onondaga.[75] Rather, these tribes are not at all related. The Croatoan were Algonquian,[76] the Cherokee Iroquoian,[77] and the Cheraw Siouan—three completely distinct linguistic groups.

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68 Id. at 81.

69 H.R. Hrg. No. 101–57, 101st Cong., 1st Sess. 23 (Sept. 26, 1989). This view was reiterated as recently as May of this year. See Letter of Thomas Thompson, Acting Assistant Secretary for Indian Affairs, Dept. of Interior, to Congressman George Miller (May 3, 1993). This should not be construed, as some may intimate, to indicate that the BIA is somehow biased against their petition. Rather, it merely evidences that at the time the BIA found the Lumbee documentation deficient in some areas. Pointing out these deficiencies is a required step in the FAP process. See H.R. Hrg. No. 101–57, supra, at 34 (testimony of Patrick A. Hayes); 25 CFR § 83.9(b) (1991).

70 H.R. Hrg. No. 101–57, supra note 69, at 71 (statement of Dr. William C. Sturtevant).

71 See, e.g., H.R. Hrg. No. 101–57, supra note 69, at 230–32 (statement of Dr. Merrell).

72 Lumbee Petition, supra note 38, at 4.

73 H.R. Hrg. No. 101–57, supra note 69, at 68.

74 See supra notes 30 to 46 and accompanying text.

75 See 15 Handbook of North American Indians, supra note 14, at 336, 339–40, 344–524.

76 15 Handbook of North American Indians, supra note 14, at 271–81.

77 Id. at 334–36.

In fairness, however, we note that two anthropologists have stated that it is possible that another of Cheraw existed, and that they could have been one of the progenitors of the Lumbee.[78] There are some facts from which this inference could plausibly be drawn.[79] We do not necessarily rule out the theory of Cheraw descent; records from this period are sketchy at best and, as one early explorer noted:

> In tracing the origin of a people, where there are no records of any kind, either written, or engraved, who rely solely on oral tradition for the support of their ancient usages, and have lost great part of them * * * where we have not the light of history, or records, to guide us through the dark maze of antiquity, we must endeavor to find it out by probable arguments.[80]

Moreover, we reiterate that we do not purport to judge the merits, or lack thereof, of the Lumbee petition. Rather, we think that the descent issue, among others, points out that this is not the open and shut case its proponents would have us believe, and underscores the need for its review by objective and neutral historians, anthropologists and other scientifically-trained personnel at the BIA. It is relatively immaterial to our position that the tribe has produced experts to testify before us regarding the validity of the Lumbee claims, or that an equal number of other experts has contradicted them; it may well be that the Lumbee have a perfectly valid claim. We are simply stating that *we as a body* are not adequately equipped to make that determination.

True, as the Chairman of this Committee has previously pointed out, "[t]his is not about us being experts. It is about weighing the evidence that the experts have given us. That is our job on this and so many other subjects."[81] However, the "experts" disagree on many issues, and there is not one member of this Committee, nor of our staffs, with the specialized educational background necessary to make an informed decision in this area. Properly done, the process of recognition requires an evaluation of complex and often ambiguous data and issues of ethnohistory, cultural anthropology, and genealogy. Not only do we lack that expertise, but there are precious few members of this Committee with any more than the most superficial knowledge on the subject at all. We seriously doubt that any member of the majority, or of their staffs with perhaps the exception of the subcommittee counsel, has read even the multivolume Lumbee recognition petition, let alone any anthropological, ethnohistorical or sociological treatise on the group.

This lack of knowledge is especially troubling in the case of the Lumbee. Laypersons tend to have a single, conglomerate view of what constitutes an Indian tribe, a view usually based on the Great Plains model.[82] The Lumbee, however, bear very few if any charac-

[78] See H.R. Hrg. No. 101-57, supra note 69, at 229–234 (statement of Dr. James Merrell).

[79] See H.R. Hrg. No. 191-57, supra note 69, at 43 (statement of Dr. Jack Campisi), 231–34 (statement of Dr. James Merrell).

[80] 1989 Merrell, supra note 54, at vii (quoting James Adair from an unattributed source).

[81] 137 CONG. REC. H–6902 (Sept. 26, 1991).

[82] See Peter H. Wood, "Tuscarora Roots: An Historical Report Regarding the Relation of the Hattaras Tuscarora Tribe of Robenson County, North Carolina, to the Original Tuscarora Indian Tribe" 93–94 (1992).

teristics in common with that view, a fact of which we would wager most if not all of the members of the House are unaware. The Lumbee have an Indian ancestry, but have never had treaty relations with the United States,[83] a reservation, or a claim before the Indian Claims Commission,[84] they do not speak an Indian language; they have had no formal political organization until recently; and they possess no autochthonous "Indian" customs or cultural appurtenance such as dances, songs, or tribal religion.[85] One of the group's consultant anthropologists, Dr. Jack Campisi, noted this lack of Indian cultural appurtenances in a hearing colloquy with then-Congressman Ben Nighthorse Campbell:

> Mr. CAMPBELL. Do [the Lumbee] have a speken language * * *?
>
> Dr. CAMPISI. No.
>
> Mr. CAMPBELL. Do they have distinct cultural characteristics such as songs, dances, and religious beliefs and so on? * * * Do the Lumbees have that?
>
> Dr. CAMPISI. No. Those things were gone before the end of the 18th Century.[86]

This absence of cultural appurtenances in part identifies the Lumbee as part of what sociologist Brewton Berry has termed the "marginal Indian groups."[87] As Berry notes:

> These are communities that hold no reservation land, speak no Indian language, and observe no distinctive Indian customs. Although it is difficult to establish a firm historical Indian ancestry for them, their members often display physical features that are decidedly Indian. Because they bear no other historic tribal names, they often emphasize a *Cherokee* ancestry.[88]

These characteristics do not, in our mind, necessarily preclude federal recognition. They do, however, point out that this is a case replete with out-of-the-ordinary complexities which require more than just a simple one-page staff memo to understand fully. Needless to say, if those of us charged with the day-to-day oversight of Indian affairs do not have the necessary expertise—or even knowledge—in this area, how will the balance of our Members appro-

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[83] H.R. Rep. No. 1656, 84th Cong., 2d Sess. 2 (1956) (reprinting Letter from Orme Lewis, Asst. Sec. of the Interior, to Committee on Interior and Insular Affairs (Aug. 3, 1955)).

[84] See Final Report of the United States Indian Claims Commission," H.R. Doc. 96–383, 96th Cong., 2d Sess. 55, 139–40 (1980).

[85] See K. BLU, supra note 33, at 1, 85–86, 134–42, 160–62 (anthropological study of the Lumbee); DIAL & ELIADES, supra note 41, at xiv ("they so thoroughly adopted the white man's lifestyle several centuries ago that they can point to no extensive remaining Indian culture"). In fact, in the late 1930's, several members of the group sought to establish the nonindigenous longhouse religion of the Haudenosaunee Confederacy of New York in the area.

[86] Joint. Cong. Hrg. No. 102–JH1, 102d Cong., 1st Sess. 129 (August 1, 1991). This lack of a traditional Indian culture is not unusual in the East, where the diseases, wars, and waves of settlement from Europe decimated the tribes and pushed them west of the Mississippi, leaving the remaining members to blend in with the dominant culture.

[87] See 15 Handbook of North American Indians, supra note 14, at 290–95.

[88] Id. at 290 (emphasis added); see C. Beale, "An Overview of the Phenomenon of Mixed Racial Isolates in the United States," 74:3 American Anthropologist 704–10 (1972); E. Price, "Mixed-blood Populations of Eastern United States as to Origins, Localizations, and Persistence" (1950) (unpublished doctoral thesis, University of California at Berkeley); W. Gilbert, "Memorandum Concerning the Characteristics of the Larger Mixed-blood Racial Islands of the Eastern United States," 24:4 Social Forces 438–47 (1946); W. Gilbert, "Surviving Indian Groups of the Eastern United States," [1948] Annual Report of the Smithsonian Institution 407–38.

priately exercise those judgments as they will be called upon to do when this legislation reaches the floor?

Aside from our lack of expertise, other considerations militate against removing the recognition process from the BIA in this case. Foremost among these is the fact that recognition should be based on established principles free from the eddies and currents of partisan politics and influence—this was the reason the FAP criteria were established in the first place. Congress is by nature, however, a highly partisan institution. A single, powerful member in the majority party is perfectly capable of moving a recognition bill through this body with little reference to its actual merits. As one attorney has noted:

> Neither this Committee nor the Senate Committee has adopted any self-policing criteria [to use] to judge the petitions. It has to do with the nature of the arguments that are put forward before [the Committee], the proponents of the legislation bring their historians and anthropologists and say absolutely this is a tribe. The member or sponsor of the bill lobbies the members of the Committee on behalf of his [petitioning] constituent and depending on whether he's persuasive or not perhaps he is successful. Some professional staff pointed out to me one day, what happens the day that Dan Rostenkowski[, Chairman of the House Ways and Means Committee,] goes to George Miller[, Chairman of the House Natural Resources Committee,] and says the Alie [sic] tribe are alive and living in downtown Chicago. That should not be the way the federal recognition is granted. There has to be some sort of criteria and I think that is the bottom line.[89]

The Lumbee attorney has previously acknowledged the wisdom of this view by recognizing its obverse, and has argued against leaving the process up to Congress:

> [E]xperience in the last few Congresses has also taught us that the power of a single congressman who represents a single district who is opposed to the recognition of other tribes can be very influential. That person can block a particular bill and, for all practical purposes, prevent the recognition of a tribe that should be recognized. You can create a political donnybrook by bringing it [the FAP process] all back to Congress.[90]

In other words, while we clearly have the power to recognize a tribe, that does not mean that the wisest use of that power is its exercise. In the absence of any discernible criteria by which we judge tribal status, and of any particularized background or knowledge, the Congress should leave the decision up to those best qualified to make it: the BIA.

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[89] H.R. Hrg. No. 102–79, 102d Cong., 2d Sess. 173 (Sept. 15, 1992).
[90] H.R. Hrg. No. 102–79, supra note 89, at 160 (statement of Arlinda Locklear).

V. Lumbee "Uniqueness"

Despite the fact that the BIA, and not this body, is best equipped to handle the issue, the Lumbees and their supporters argue that they should be allowed to bypass the established recognition process because theirs is a unique case requiring a legislative solution.[91] First, they contend that prior legislation both recognized the group and precluded them from applying for recognition under the FAP. Second, they maintain that they are justified in bypassing the FAP because the process in cumbersome and ineffective. Finally, they assert that approval of the bill is consistent with recent actions of Congress in enacting recognition legislation. For the reasons set forth below, however, these contentions are without merit sufficient to warrant congressional recognition. Their arguments are tenuous at best, however, and actually mitigate against this legislation and in favor of less precipitous legislative solutions.

A. THE 1956 LUMBEE ACT

The Lumbees' principle contention is that the Act of June 7, 1956,[92] both served as a prior federal recognition of the tribe and precludes their petitioning for recognition under the present regulatory scheme. As a result, they posit, they are entitled to congressional recognition. Such a position rests, however, on specious premises. The 1956 Act did not in any way extend federal recognition to the Lumbee; rather, it simply served as a formal affirmation of their status as an identifiable group named "Lumbee" descended from an admixture of Indian and other ethnic groups. Moreover, while the Act may be read as precluding the Lumbee from petitioning for administrative recognition, the logical solution is to amend the Act to remove the bar rather than the bypass the FAP altogether.

1. The act as purported prior recognition

The proponents' position that the purpose of the 1956 Lumbee Act was the acknowledgement of the Lumbee as a federally-recognized tribe is simply wrong. The purpose of the Act is clear; it was merely a commemorative bill designating a group of Indians by a particular name to reflect a similar change in the group's self-designation made three years earlier at the state level.[93] This is evident from the wording of the act itself, which states in pertinent part:

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[91] In response to this uniqueness claim, we feel constrained to observe at the outset that there has not been a single Indian group which has appeared before this Committee seeking congressional recognition that the not stressed how its case—and its case alone—is unique and thus deserving of congressional action. The following statement by a proponent of a similar recognition bill for the Jena Band of Choctaw of Louisiana considered last Congress is illustrative of this sentiment: "While I understand that the current [BIA] procedure is both necessary and appropriate in determining the proper status of most Indian groups, I assure you that the Jena Band is not such a group." Statement of Sen. J. Bennet Johnston Before the Senate Select Committee on Indian Affairs (Mar. 28, 1990) (emphasis added). As Congressman Charles Taylor of North Carolina cogently stated in the last Congress: "It almost goes without saying that if the Congress had a dollar for every entity that has come before it arguing uniqueness as a reason why they should be treated differently than the standard[,] we could immediately erase the federal deficit." H.R. Rep. No. 102–215, supra note 29, at 17 (Additional Views).

[92] Act of June 7, 1956, ch. 375, 70 Stat. 254 (Pub. L. No. 570) (not classified in U.S. Code).

[93] See [1953] N.C. Sess Laws ch. 874.

> That the Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall from and after the ratification of the Act, *be known and designated* as Lumbee Indians of North Carolina.[94]

The 1956 Act fails to include any of the typical indicators that would enable one properly to conclude that it is a recognition statute. In contrast to the 1956 Act's language, when Congress has desired to grant federal recognition to a tribe it has consistently done so by express and unambiguous language. For example, Public Law 95–281[95] states "[t]he Modoc Indian Tribe of Oklahoma is hereby recognized as a tribe. * * *";[96] Public Law 95–195[97] states "recognition is hereby extended to the [Siletz] tribe. * * *",[98] and Public Law 93–109[99] states "[f]ederal recognition is hereby extended to the Menominee Indian Tribe. * * *"[100] Even the majority must recognize that this is the correct formula to invoke recognition, since the bill before us—H.R. 334—contains identical language: "Federal recognition is hereby extended to the Lumbee tribe * * * ."[101] Furthermore, unlike the language in all other recognition acts—

> [t]he 1956 [Lumbee] legislation does not mention any political organization of the Lumbee or any governing body. It does not convey any land in trust, make any reference to whether state laws are to apply, or render Lumbees eligible for federal services. It, thus, would seem that there is little room for an argument that the statute was extending recognition. * * *[102]

Moreover, the Act passed with the following introductory clauses which, from the liberal use of the term "whereas," follow the usual litany of commemorative legislation:

> Whereas many Indians now living in Robeson and adjoining counties are descendants of that once large and prosperous tribe which occupied the lands along the Lumbee River at the time of the earliest white settlements in that section; and
>
> Whereas at the time of their first contacts with the colonists, these Indians were a well-established and distinctive people living in European-type houses in settled towns and communities, owning slaves and livestock, tilling the soil,

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[94] Act of June 7, 1956, supra note 92, 70 Stat. at 255 (emphasis added).
[95] Act of May 15, 1978, 92 Stat. 246 (codified at 25 U.S.C. § 861 et seq. (1988)).
[96] Id at § 2(a)(1) (codified at 25 U.S.C. § 861a(1) (1988)).
[97] Act of November 18, 1977, 91 Stat. 1415 (codified at 25 U.S.C. § 711 et seq. (1988)).
[98] Id at § 3(a) (codified at 25 U.S.C. § 711a(a) (1988)).
[99] Act of December 22, 1973, 87 Stat. 770 (codified at 25 U.S.C. § 903 et seq. (1988)).
[100] Id at § 3(a) (codified at 25 U.S.C. § 903a(a) (1988)).
[101] H.R. 334, supra note 3, at § 3; cf. H.R. 3958, § 4, 102d Cong., 1st Sess. (Nov. 26, 1991) (a bill to "grant Federal recognition to the Little Traverse Bay Bands of Odawa"); H.R. 2349, § 2, 102d Cong., 1st Sess. (May 15, 1991) (Same) (Mowa Band of Choctaw).
[102] S. Rep. No. 100–579, 100th Cong., 2d Sess. 31 (1988) (citing Opinion of the American Law Division, Library of Congress (Sept. 28, 1988)).

> and practicing many of the arts and crafts of European civilization; and
>
> Whereas by reason of tribal legend, coupled with a distinctive appearance and manner of speech and the frequent recurrence among them of family names such as Oxendine, Locklear, Chavis, Drinkwater, Bullard, Lowery, Sampson, and others found on the roster of the earliest English settlements, these Indians may, with considerable show of reason, trace their origin to an admixture of colonial blood with certain coastal tribes of Indians; and
>
> Whereas these people are naturally and understandably proud of their heritage, and desirous of establishing their social status and preserving their racial history * * *.[103]

The last of these clauses is further evidence of the aim of the legislation: validating the "social status" of this group and preserving their "racial history." In the context of the 1956 legislation, this meant formal affirmation of them as an identifiable group descended from an admixture of Indian and other ethnic groups.[104] This was not the first time that the Lumbee had sought a commemorative bill acknowledging their "Indian-ness." In 1932, members of the group sought passage of a bill to confer upon them the designation of "Cherokee Indians." The group's pro bono attorney at the time stated that—

> [t]he chief desire of these Indians appears to be that Congress shall do something which will recognize affirmatively that they are Indians. Being myself from Georgia, I am able to appreciate the desire of these Indians for some status by which they would be, at least by their own thinking, clearly distinguished from [other ethnic groups in the area].[105]

Even assuming *arguendo* that the wording of the 1956 Lumbee Act itself is somehow nebulous as to recognition, it is abundantly clear from the legislative history of the Act that it was not intended by Congress in any way to be a recognition bill.[106] As noted by the American Law Division of the Library of Congress, the committee reports accompanying the 1956 legislation indicate that the intent of the Act "was to designate a name of this group." [107] To illustrate, House Report No. 84–1654 reads as follows: "If enacted, H.R. 4656 would permit about 4,000 Indians of mixed blood presently residing in Robeson and adjoining counties in North Carolina *to become known and designated as the Lumbee Indians of North Carolina.*" [108] Nowhere in the report does the term "recognition" appear;

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[103] Act of June 7, 1956, supra note 92, 70 Stat. at 254–55.

[104] *Accord*, S. Rep. No. 100–159, supra note 498, at 29 (reprinting Opinion of the American Law Division).

[105] 1 Lumbee Petition, supra note 38, at 64–65 (quoting memorandum from Ellwood P. Morey); *P. Wood*, supra note 82, at 94 (citing Letter of J. Collier to Senator J.W. Bailey dated Mar. 26, 1932).

[106] The Supreme Court has repeatedly ruled that legislative histories are highly relevant in construing Indian statutes. See, e.g., *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584 (1977).

[107] S. Rep. No. 100–579, supra note 68, at 27 (citing S. Rep. 84–2012, 84th Cong., 2d Sess. (1956); H.R. Rep. No. 84–1654, 84th Cong., 2d Sess. (1956)).

[108] H.R. Rep. No. 84–1654, 84th Cong., 2d Sess. 1 (1956) (emphasis added); cf. S. Rep. No. 84–2012, 84th Cong., 2d Sess. 1 (1956) (same language).

nor can a congressional desire to extend federal recognition be inferred from the language of the report.

Additionally, the following colloquy between the sponsor of the 1956 Act, Congressman Frank Carlyle, and another committee member confirms this view and belies the majority's assertion that the Lumbee understood the intent of the Act to be recognition:

> Mr. CARLYLE. Now I should like for you to recall that there is nothing in this * * * that requests one penny of appropriations of any kind. There is nothing in this bill that would call for any upkeep or expenditure. *It just relates to the name of these people of the county.*
>
> * * * * *
>
> Mr. ASPINALL. What benefits do they expect to get from this? Just purely the name "Lumbee Indian Tribe" does not appear to me to give too much importance to it, unless they expect to get some recognition later on as members of some authorized tribe, and then come before Congress asking for benefits that naturally go to recognized tribes.
>
> Mr. CARLYLE. No one has ever mentioned to me any interest in that, that they had any interest in becoming a part of a reservation or asking the federal government for anything. *Their purpose in this legislation is to have a name that they think is appropriate for their group.* * * *[109]

Later, Congressman Carlyle continued:

> Mr. CARLYLE. As to any ulterior motive that might be suggested—that is, if they would come in and ask for benefits now or later—that is not in this picture at all.[110]

Congressman Aspinall then asked this question of one of the Lumbee witnesses:

> Mr. ASPINALL. Do you or any members of your organization anticipate that, after you might receive *this designation,* you would come to Congress and ask for any benefits that otherwise go to Indian tribes?
>
> Rev. LOWERY. No Sir.[111]

Finally, during consideration of the bill on the House floor, the following exchange took place:

> The SPEAKER. Is there objection to the present consideration of the bill?
>
> Mr. FORD. Mr. Speaker, reserving the right to object, I should like to ask the author of the bill, the gentleman from North Carolina [Mr. Carlyle], whether or not this bill, if enacted, would in any way whatsoever commit the federal government in the future to the furnishing of services or monetary sums?
>
> Mr. CARLYLE. Mr. Speaker, I am happy to say that the bill does not * * *

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[109] H.R. Hrg. No. 101–57, supra note 69, at 134–35 (emphasis added).
[110] Id. at 176.
[111] Id. at 176 (emphasis added).

Mr. FORD. There is no obligation involved, as far as the Federal Government is concerned * * *?

Mr. CARLYLE. None whatsoever.

Mr. FORD. *It simply provides for the change of name?*

Mr. CARLYLE. *That is all.*[112]

Nowhere—in committee, on the floor, or in the Act as passed—is there any statement from which one could logically construct a basis for recognition.

Not only is our position clearly supported by both the wording of the Act and its legislative history, but contemporary news reports add strong evidence to the conclusion that the purpose of the 1956 Act was simply to institutionalize the group's newly-chosen name.[113] For example, note the following from a North Carolina newspaper:

> Senator Kerr Scott reports this week that the Lumbee Indians of Southeastern North Carolina should now have their name made official as far as the Federal Government is concerned.
>
> "Last week the Senate Interior Committee's sub-committee on Indian affairs gave a quick okay to a bill that would make the name official. Final action will be routine," Scott said.
>
> The North Carolina state legislature has already passed legislation doing the same thing.[114]

Another North Carolina article notes that the Senate "had approved a bill to permit Indians of Robeson county to be designated as the Lumbee Indians of North Carolina. * * * The House and the N.C. Assembly have already approved the names for the people."[115] Another states that a bill "to make the name of Robeson county Indians the 'Lumbee Indians' has passed yet another hurdle in the Senate. * * * Previously the Indians had voted 2,189 to 35 for the name change in 1951, and in 1953, the N.C. General Assembly gave the tribe its designation as Lumbee Indians."[116] An article from the New York Times notes that the Senate voted "unanimously that some 4,000 [*sic*] Indians around Robeson County, N.C., should be known officially as the Lumbee Indians."[117] Another, that the "bill to rename the Indians of Robeson county the Lumbee Indians of North Carolina struck a snag in Washington last week, but will probably be signed by the President this week."[118] Finally, the local papers reported that "President Eisenhower has received a bill to allow Indians in and around Robeson County, North Carolina, to be known as the Lumbee Indians of North Carolina."[119]

Of all the available news articles concerning the bill, we were only able to uncover one which arguably supports the majority's

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[112] 102 Cong. Rec. 2900 (May 21, 1955) (emphasis added).

[113] The Supreme Court has repeatedly ruled that contemporary circumstances are relevant in construing Indian statutes. See, e.g., *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584, 587 (1977); *Mattz* v. *Arnell*, 412 U.S. 481, 505 (1973).

[114] Pembridge Progress (May 3, 1956).

[115] The Robesonian (May 16, 1956).

[116] The Robesonian (Apr. 26, 1956).

[117] New York Times (May 21, 1956).

[118] The Robesonian (May 28, 1956).

[119] The Robesonian (May 22, 1956).

previous assertions that the legislation "was widely reported as a recognition bill. * * *"[120] It reads:

> Senator W. Kerr Scott today asked a Senate sub-committee to give federal recognition to the Lumbee Indians of North Carolina. In testifying before a sub-committee of the Senate Interior Committee, Senator Scott said: "The State of North Carolina has already by state law recognized the Lumbee Indians under that tribal name." The North Carolina State Legislature gave official recognition to the Lumbee Indians while Scott was Governor of North Carolina. * * *[121]

However, it is evident from the context of the article that the term "recognized" means cognitive, rather than jurisdictional, recognition, especially given that the article speaks in terms of the group being "recognized" by a specific name, and that the term "recognized" had not yet acquired its present legal meaning. The article's support for the majority's argument is this highly questionable.

All the available authorities which have considered the question concur with our position that the bill is not recognition legislation. In *Maynor* v. *Morton,*[122] the United States Court of Appeals for the District of Columbia Circuit—the highest federal court to have addressed the issue—stated that "the limited purpose of the legislation appears to [be to] designate this group of Indians as 'Lumbee Indians.'"[123] The court later reiterated this view, noting that the Act was "a simple statute granting the name "Lumbee Indian" to a group of Indians, which hitherto had not had such designation legally. * * *"[124] Similarly, the American Indian Policy Review Commission agrees with this assessment of the Act's intent.[125] The Comptroller General has concluded that the Lumbee are not a federally recognized tribe,[126] as has the Department of the Interior.[127] In a 1988 opinion, the American Law Division of the Library of Congress concluded "that the 1956 statute does not provide recognition of Lumbee Indians as a political entity. * * *"[128]

Even the Lumbee attorney has herself previously concluded that the Act does not confer recognition on the tribe,[129] but rather "was the culmination of many years of effort by the Lumbee Indians to be known by a name that reflected the group's unique

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[120] H.R. Rep. No. 102–215, supra note 29, at 5.

[121] The Robesonian (Apr. 25, 1956) (emphasis added). This article was also printed verbatim in the same day's issue of the Lumberton Post Times.

[122] 510 F.2d 1254 (D.C. Cir. 1975).

[123] Id. at 1257–58.

[124] Id. at 1259.

[125] Task Force Ten Report, supra note 24, 171.

[126] See, e.g., Opinion of the Comptroller Gen., No. B–185659, 58 Comp. Gen. 699 (Aug. 1, 1979).

[127] See, e.g., Opinion of the Assoc. Solicitor, Div. of Indian Affairs, No. BIA–IA–0929 (Sept. 26, 1988).

[128] Op. of the American Law Division, Library of Congress (Sept. 28, 1988), reprinted in S. Rep. No. 100–579, 100th Cong., 2d Sess. 26–32 (1988).

[129] *See* Memorandum from Arlinda Locklear, Native American Rights Fund, to John Sheperd (Sept. 20, 1977), reprinted in H.R. Hrg. No. 101–57, supra note 69, at 208 ("Although the Lumbee Act of 1956 does not confer federal recognition on the Lumbees . . ."), 215 ("There is no language that even remotely recognizes . . . tribal status for the group."). We note that her position on this issue, however, is apparently quite fungible. In 1989, she told this Committee that the 1956 Lumbee Act "recognized the Lumbee Indian Tribe." Id. at 106. This rather dramatic volte-face is indicative of the widely vacillating Lumbee Assertions over the years, and the revisionist nature of much of the material they have presented to this Committee.

ethnohistory."[130] Additionally, we note that nowhere in the Lumbee petition for recognition is any assertion made to the effect that the 1956 Act constitutes recognition legislation.[131] In fact, the petition makes no stronger assertion than that, in gaining passage of the Act, "[t]he tribe had finally received some degree of federal acceptance after fifty years of trying."[132]

In its report on H.R. 1426—the identical predecessor to H.R. 334—the Democrats on this Committee apparently agreed with our conclusion, explicitly stating that the purpose of the state legislation was to designate the group as "'Lumbee Indians of North Carolina.'"[133] Members of the Rules Committee have implicitly taken the view that the Act did not serve to recognize the Lumbee;[134] as has the Senate Committee on Indian Affairs.[135] Perhaps more to the point, we pose the following query: if the 1956 Lumbee Act recognized the Lumbee as the majority suggests, then why do we now need H.R. 334 to accomplish that very same objective?

In spite of all this information, there are some who have argued that the state act changing the group's name to Lumbee was state recognition legislation, and that the 1956 Act was meant to be identical recognition legislation on the federal level.[136] Others have said that the Lumbee understood the purpose of the 1956 Act to be federal recognition as we understand that term today. However, the sources we have previously cited, as well as the following chronology of article captions from the Robersonian, a local North Carolina paper, clearly belie these revisionist assertions and support the conclusion that both the state and federal acts were both simply commemorative bills designating and existing Indian group by a new name:

Apr. 05, 1951—"'Lumbee Indians' Designated in Bill Introduced by Watts."

Apr. 12, 1951—"Indian Name Bill Hearing Attended by Both Factions."

Aug. 17, 1951—"Robeson Indians Drive Toward Vote to Decide Official Name."

Dec. 04, 1951—"Indians Can Have Election to Decide on Name of Tribe."

Jan. 23, 1952—"Indians Voice Name Change Opinions."

Feb. 01, 1952—"Robeson Indians Favor 'Lumbee' as Race Name."

Feb. 05, 1952—"Indians Vote Name Change."

Feb. 06, 1953—"Indian Asks for Teacher Support for Lumbee Name."

Feb. 12, 1953—"Senate Gets Indian Bill."

Sep. 30, 1953—"Copy of Lumbee Name Bill Presented to Indian Leader."

[130] Id. at 21.
[131] See generally 1 Lumbee Petition, supra note 38.
[132] 1 Lumbee Petition, supra note 38, at 98.
[133] H.R. Rep. No. 102–215, supra note 29, at 4.
[134] See, e.g., 137 Cong. Rec. H-6889 (Sept. 26, 1991) (statement of Mr. Hall of Ohio) ("Because the Lumbee Tribe has never received Federal recognition . . .").
[135] See, e.g., S. Rep. No. 100–579, supra note 49, at 1, 2 (stating that the Lumbee are "the largest group of Indians in the United States *that is not officially recognized* by the United States") (emphasus added).
[136] See, e.g., H.R. Rep. No. 102–215, supra note 29, at 4.

Jul. 29, 1955—"Indian Name-Change Stands Little Chance of Passing This Session."

Feb. 21, 1956—"[U.S.] House Passes Indian Name Bill."

May 16, 1956—"Indian Bill Ok'd by Senate Group."

May 22, 1956—"President Receives Lumbee Indian Bill."

The Robesonian article listed above and dated July 29, 1955, is particularly illustrative of our point:

> Congressman James A. Haley * * * of the House Indian Affairs subcommittee said today he plans for further sessions on the group before Congress adjourns. * * * But Haley added that he personally could see no objection to the proposal as long as it involves strictly a name change and not the question of federal benefits.
>
> The subcommittee had had assurance from the Rev. D.F. Lowery of Pembroke that the Indians do not want a reservation and do not want to become wards of the government. * * *
>
> He told the congressman that the Robeson area Indians "would leave the county before they would come under a reservation or (become) anything like wards of the government."
>
> "We just want to say we are Lumbee Indians," the Pembroke man said here.
>
> Pending before the committee is a bill introduced by Rep. F. Ertel Carlyle of Lumberton to give the designation of Lumbee to the Indians living along the Lumbee River. * * *

The following passage from the Lumbee petition, tracing the course of the groups' name changes, further substantiates our position that the Act simply codified a new self-designation for the group previously enacted at the state level:

> [T]here was an absence of tranquility among our people on the whole [name] issue. Accordingly, a group of leaders among us joined in suppert of a name previously suggested—Lumbee—which would give us a well adapted legal name, geographically proper, and equally support the historical fact of our multiple tribal origins.
>
> * * * * *
>
> The result * * * was the completion and eventual approval of a change of name from Cherokee Indians of Robeson County to Lumbee Indians of the State of North Carolina. * * *
>
> Following the draft of the above legislation the Commissioners of Robeson County held a duly constituted referendum and the bill was approved by a vote of some 2,000 for and 30 against. The Commissioners then unanimously concurred in the referendum result, following which the [state] legislature enacted it into law. It was then submitted to the House and Senate of the U.S., passed and signed

by the President of the U.S., with minor amendments, as national legislation.[137]

This passage—tracing the flow of the legislation from concept to state legislation to federal legislation—clearly contradicts the revisionist view now put forward by the bill's proponents that the state act was "recognition legislation" and the 1956 Act simply a federal adoption of that recognition.

Further contradicting the erroneous view of the purpose of the state, and thus the federal, act are statements noting that the State of North Carolina recognized the Lumbee as a political entity in 1885 and has maintained an uninterrupted government-to-government relationship with them ever since from the Chairman of the Board of Directors of the Lumbee Regional Development Association;[138] a member of the House of Rules Committee;[139] the Chairman of this Committee;[140] the sponsor of H.R. 334;[141] Senator Terry Sanford of North Carolina;[142] the Senate Committee on Indian Affairs;[143] the Lieutenant Governor of North Carolina;[144] the Secretary of Administration, Office of the Governor of North Carolina;[145] the Chairman of the North Carolina Commission on Indian Affairs;[146] the Lumbee attorney;[147] the group's own position paper;[148] and the anthropolegist who authored the Lumbee recognition petition.[149] Even the group's petition for recognition states that "[i]n 1885, the North Carolina General Assembly passed an act recognizing the Lumbee tribe * * *."[150] In a case such as we have here where recognition has been legislatively extended to a group by a state, and that recognition has not been withdrawn, it makes little sense to argue that the state would reextend that same recognition in a later act.

This is not the first time in the group's history that federal legislation has been introduced on its behalf to mirror a change in name designation by the state. In 1924, this Committee favorably reported to the House H.R. 8083, a bill to change the name of the

[137] 1 Lumbee Petition, supra note 38, at 109 (statement of Dr. Fuller Lowery).

[138] See, e.g., 137 Cong. Rec. H–6897 (Sept. 26, 1991) (reprinting statement of Adolph Blue) (noting tribe recognized by state in 1885).

[139] See, e.g., 137 Cong. Rec., supra note 138, at H–6889 (statement of Mr. Quillen of Tennessee) ("The Tribe was first recognized by the State of North Carolina in 1885").

[140] See, e.g., id. at 6890 (statement of Mr. Miller of California) ("The State of North Carolina acknowledged them as a tribe in 1885.").

[141] See, e.g., Joint Cong. Hrg. No. 102–JH1, 102d Cong., 1st Sess. 31 (August 1, 1991) (statement of Mr. Rose of North Carolina).

[142] See, e.g., id. at 23, 25–27 ("The Lumbee Indians have been recognized in the State of North Carolina since 1885 * * *").

[143] See, e.g., S. Rep. No. 100–579, supra note 49, at 2 ("In 1885, the State of North Carolina Recognized the tribe * * *").

[144] See, e.g., id. at 59 (statement of James C. Gardner) ("As you know, the State of North Carolina has maintained a government to government relationship with the Lumbee Tribe since 1885.")

[145] See, e.g., id. at 61 (statement of James S. Lofton) ("Since 1885, the State of North Carolina has recognized the Lumbee Tribe as a separate tribal Indian entity. * * *").

[146] See, e.g., H.R. Hrg. No. 101–57, supra note 69, at 38 (statement of Lonnie Revels) ("The State of North Carolina has had an ongoing relationship with the Lumbees since 1885.").

[147] See, e.g., H.R. Hrg. No. 101–57, supra note 69, at 106 (statement of Arlinda Locklear) ("In 1885, the tribe was formally recognized by the State of North Carolina under the name Croatan Indians of Robeson County.").

[148] See, e.g., 137 Cong. Rec., supra note 138, at H–6894 ("Objections and Responses—Lumbee Recognition Act, H.R. 1426") ("The Lumbees were recognized by the State of North Carolina in 1885 * * *").

[149] See, e.g., id. at 97 at 97 (statement of Dr. Jack Campisi) ("The State of North Carolina recognized them in 1885 * * *.").

[150] 1 Lumbee Petition, supra note 38, at 31, The sponsor of the act, Assemblyman Hamilton McMilian, later recalled: "In 1885 I got the North Carolina Legislature to recognize them [the Lumbee] * * *." Id.

group from Croatan to Cherokee.[151] The Committee report notes the purpose of the bill:

> By an act of the State of North Carolina these Indians have recently been *designated* as Cherokee Indians, and this legislation carries out this act and gives the Indians the same Federal status * * *.[152]

Clearly, the 1956 Act served the same purpose.

All of this preceding information aside, the argument that the Act somehow recognizes the Lumbees is especially disingenuous when examined in light of the prevailing Congressional Indian policy at the time. Over the years, Congressional dealings with the tribes have gone through several policy phases. Until 1887, the basic approach to dealing with the tribes was conquest and segregation to designated territories and reservations. Between 1887 and 1934, the federal government implemented a program directed at assimilating Indians into the dominant culture. In 1934, with the adoption of the Indian Reorganization Act, the government began to encourage tribal sovereignty and self-governance. In 1953, Congress formally adopted a policy of "termination," its express aim being "as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens * * * and to end their status as wards of the United States * * *."[153] In other words, the new policy sought to force Indians into the mainstream culture by terminating their separate tribal status and the benefits they received from that status. Pursuant to this policy, during the 1950's Congress terminated the federal recognition—and thereby the benefits—of some 110 tribes[154] consisting of more than 13,000 individuals.[155] They were then subject to state laws, and their lands were converted to private ownership and in most instances sold.

In the same year in which the 1956 Lumbee Act was passed, Congress terminated four tribes: the Lower Lake Rancheria,[156] the Wyandotte,[157] the Peoria,[158] and the Ottawa.[159] To interpret the Lumbee Act as granting federal recognition to the Lumbees during a period in which Congress was actually terminating recognized tribes is to indulge in historical revisionism at its worst and fab-

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[151] See H.R. Rep. No. 826, 68th Cong., 1st Sess. 1 (1924).

[152] Id. at 1 (emphasis added).

[153] H. Con. Res. 108, 83d Cong., 1st Sess., 67 Stat. B132 (1953); see H.R. Res. 698, 98 Cong. Rec. 8788 (1952).

[154] There were fourteen termination acts from 1954 to 1962. Two of the acts terminated large numbers of tribes: the Western Oregon Termination Act, Pub. L. No. 83-588, ch. 733, 68 Stat. 724 (Aug. 13, 1954) (61 tribes and bands); and the California Rancheria Act, Pub. L. No. 85-671, 72 Stat. 619 (Aug. 18, 1958) (38 tribes and bands).

[155] Hauptman, "Learning the Lessons of History: The Oneidas of Wisconsin Reject Termination, 1943–1956," 14 J. Ethnic Stud. 31 (Fall 1986).

[156] Pub. L. No. 443, ch. 100, 70 Stat. 58 (Mar. 29, 1956).

[157] Pub. L. No. 887, ch. 843, 70 Stat. 893 (Aug. 1, 1956).

[158] Pub. L. No. 921, ch. 881, 70 Stat. 937 (Aug. 2, 1956).

[159] Pub. L. No. 943, ch. 909, 70 Stat. 963 (Aug. 3, 1956); see 1 Lumbee Petition, supra note 31, at 237.

ricates a result clearly contrary to the avowed policy and stated intent of Congress during this period.[160]

In sum, it is clear from the wording of the 1956 Act, as well as from its legislative history, that the Act simply institutionalized on the federal level a name for the group adopted by the State of North Carolina in 1953. Contemporary news reports support this conclusion, as do the opinions of the federal courts, administrative agencies, and the Library of Congress' Congressional Research Service.

2. The act as a bar to petitioning

The second portion of the argument regarding the 1956 Lumbee Act—that it precludes the Lumbee from petitioning for recognition—may have more merit. In response to concerns raised that the Act would somehow allow tribal members to avail themselves of federal services even though not part of a recognized tribe, the following section was appended to the bill prior to passage to "clearly indicate that the Lumbee Indians w[ould] not be eligible for any services provided through the Bureau of Indian Affairs to other Indians:"[161]

> Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.[162]

The Department of the Interior and others have concluded that this portion of the Act essentially prohibits the Lumbee from petitioning for recognition under the FAP.[163] While we do not necessarily agree with the accuracy of that conclusion, such agreement is essentially unimportant to our discussion since the present and binding position of the Bureau is that the 1956 Act does constitute a bar to petitioning.

Given this stance, the logical solution is to amend the Act to allow the Lumbee to petition—the solution proposed by an amendment in the nature of a substitute offered by Congressman Craig Thomas at both subcommittee and full-committee mark-up—and not simply to ignore the problem in the rush to circumvent the recognition process. The amendment would have directly addressed all of the Lumbee concerns. It would, inter alia, remove the 1956

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[160] Even the sponsor of H.R. 334 has recognized that the policies of this period were incompatible with recognition of the Lumbee, see H.R. Hrg. No. 101–57, supra note 69, at 15; as has the majority, see Majority Report, ante at [ ] ("Oftentimes, [ ] bills ran counter to then prevailing Indian policy. For example * * * the 1955 bill [the 1956 Act] was considered during the termination period of federal Indian policy.").

[161] S. Rep. No. 2012, 84th Cong., 2d Sess. 2 (1956).

[162] Act of June 7, 1956, supra note 92, at 70 Stat. 254. In light of this paragraph that it is highly unlikely that Congress would extend recognition to a group, the primary purpose of which is to make available the services of the BIA, and then in the same Act deny those very services.

This was not the first time Congress sought to give the group a new name, while at the same time prohibiting it from receiving benefits from the BIA. In 1934, S. 1632 was amended in the Senate Committee on Indian Affairs to provide that "nothing herein shall be construed as conferring Federal wardship or any other governmental rights or benefits upon such Indians." S. Rep. No. 204, 73d Cong., 2d Sess 1 (1934).

[163] See, e.g., Opinion of the Associate Solicitor, Indian Affairs (Oct. 23, 1989), reprinted in H.R. Rep. 102–215, supra note 29, at 26–29.

Lumbee Act's statutory bar to the FAP process. In addition, it would directly remedy the most oft-cited flaw of the FAP—the time it takes to review a group's petition—by guaranteeing the Lumbee petition expedited consideration, and provide for federal district court review of untimely or adverse determinations by the BIA without requiring resort to the administrative appeals process which any other group would have to exhaust prior to taking the matter to federal court.[164] We note that the Department of the Interior, which opposes H.R. 334, supports this alternative.[165]

Unfortunately, it appears that the tribe and the majority want to have their cake and eat it too. Rather than constructively addressing the issues at hand, they clearly prefer the bar to remain in place as justification for legislative recognition. This is highly troublesome for several reasons, principally because it is a reflection of the partisan and institutional pressure to which this issue is being subjected. This same amendment was offered by a Democrat in the 101st Congress and was supported by then-Chairman Udall and a three-to-one majority of Committee members—both Democrats and Republicans. The full committee later voted to accept the substitute by a vote of 25 to 8. However, in the last Congress the same amendment—when offered by a Republican—was defeated on a strictly partisan vote of 26 to 18, even though none of the underlying facts had changed.

In this go-round, the vote in subcommittee was predictably similar: all seven Democrats voted against the amendment. The purely partisan nature of this vote is made more evidently by the following facts. Five of the seven Democrat members of the subcommittee have federally-recognized Indian tribes in their districts.[166] Every one of those tribes has opposed passage of H.R. 334 and its predecessors;[167] yet despite their tribes' opposition, these Members voted for the bill.[168] This partisanship was repeated at the full-committee level, where the substitute was defeated by a vote of 26 to 14, despite the vehement opposition of those tribes that members of this Committee are constantly stressing we are here to serve. This voting pattern speaks volumes in support of our argument that congressional recognition displaces merit and a reasoned set of standards in favor of influential sponsors and party politics.

Another reason we find the off-hand rejection of our substitute troubling is the effect that it has on the Lumbee. The Committee's hearing records describe in detail the numerous unsuccessful attempts the Lumbee have made between 1888 and the present to persuade either the Executive Branch or the Congress to extend some form of federal recognition to the group. Given the ultimate

[164] A copy of the amendment appears as an attachment to this Report.

[165] See Letter from Thomas Thompson, Acting Assistant Secretary for Indian Affairs, to Congressman George Miller, Chairman, Committee on Natural Resources (May 3, 1993) (a copy is attached to this Report).

[166] These members are Messrs. Richardson, Gejdenson, Williams, Johnson of South Dakota, and Ms. English of Arizona.

[167] See, e.g., Resolution No. 88–5, Southern Pueblos Governors' Council (Oct. 14, 1988); Resolution No. 88–1, Montana-Wyoming Tribal Chairmans' Association (Sept. 16, 1988); Resolution No. 88–219, Confederated Salish and Kootenai Tribes (Sept. 16, 1988).

[168] There is one exception to this opposition. The Ft. McDowell (Mojave-Apache) Tribe, in Ms. English's district, supports H.R. 334. This support no doubt stems from the fact that the Ft. McDowell tribal attorney also happens to be the Lumbee attorney. Ft. McDowell is the only one of the 21 Arizona tribes that supports the bill.

fate that awaits H.R. 334 in the Senate,[169] it is highly regrettable that the legislation's proponents are willing to let another Congress—another two years—elapse without passage of their bill rather than join in a reasonable and workable solution to the Lumbee problem. It is especially ironic in light of the fact that the opponents of our amendment consistently urge its defeat on the grounds that it would "delay the long overdue recognition for this tribe."[170] Nothing will do more to assure that delay, however, than the passage of H.R. 334 in its present form. If the House had accepted the substitute four years ago, the Lumbee would have been through the process already.

B. THE ACKNOWLEDGEMENT PROCESS

The majority's next contention is that the Lumbee are justified in bypassing the FAP because the process is cumbersome and ineffective. The FAP *has* come under fire over the last few years. There are those who argue—correctly in some instances—that the process takes longer to complete than is provided for in the agency's regulations, costs each group financial resources they do not have, and is subject to the whims of the BIA staff. In limited defense, we point out that because the FAP establishes a permanent government-to-government relationship with a tribe, the BIA is very cautious about its determinations. This kind of exhaustive research takes a lot of time, as does the process of preliminary review, notification to the tribe of deficiencies, and waiting for the tribe to respond to these deficiencies with a supplemental petition. In addition, the FAP teams have been historically underfunded by this Congress and there have never been more than two. Still, the process clearly has its faults.

While we have always agreed that the FAP is in need of repair, it is not as feckless as the bill's proponents would have this Committee believe. For example, we have repeatedly heard Members state that there is a backlog of 120 cases waiting to be processed, and that only eight tribes have made it through the process since its inception.[171] However, those numbers—oft-parroted as the premier example of why the FAP should be bypassed—are patently spurious and unsupported by the record.[172] There were forty (40) petitions on hand when the FAP office organized in October, 1978, and ninety-six (96) petitions or related inquiries have been filed

[169] After passing the House in September, 1991, H.R. 1426, the immediate predecessor to H.R. 334, languished for more than a year in the Senate without being taken up before the sine die adjournment:

09/26/91—H.R. 1426 passed House.
09/30/91—Received in Senate.
09/30/91—Referred to the Select Committee on Indian Affairs.
11/20/91—Ordered reported.
11/26/91—Reported to Senate (No. 102–251).
11/26/91—Placed on legislative Calendar (No. 384).
02/26/92—Motion to proceed to consideration made.
02/26/92—Cloture motion on the previous motion made.
02/27/92—Motion to proceed withdrawn.
02/27/92—Cloture on motion to proceed not invoked (Vote: 58–39).

There is every indication that this pattern will repeat itself this Congress.

[170] 137 Cong. Rec., supra note 138, at H–6889, H–6903.

[171] See e.g., 137 Cong. Rec. supra note 138, at H–6890 (statement of Mr. Miller of California).

[172] See H.R. Hrg. No. 102–79, 102d Cong., 2d Sess. 32, 33–34, 174 (1992).

since then for a total of 136 cases.[173] Of these, eight (8) groups have been recognized;[174] thirteen (13 have been denied recognition;[175] one (1) was determined to be part of a recognized tribe;[176] one (1) had its status clarified by legislation at the BIA's request;[177] one (1) had its previously-terminated recognition restored;[178] three (3) were legislatively acknowledged;[179] one (1) withdrew its petition and merged with another petitioner;[180] and seven (7), including the Lumbee, require legislative action to permit processing.[181] This means that a total of thirty-five (35) cases, not eight (8) as others contend, have been resolved since 1978: twenty-three (23) by the BIA, four (4) by Congress, one (1) of its own accord, and seven (7) because they are precluded from petitioning.

Of the 101 remaining cases, nineteen (19) are considered inactive because the groups have not responded to BIA inquiries or cannot be contacted;[182] forty-seven (47) have submitted only letters of intent to petition informing the BIA that at some unspecified time in the future they will submit their actual petition;[183] and twenty-five (25) groups are in the process of responding to letters of obvious deficiency from the BIA and have not file final petitions.[184] In simple terms, 90 percent of the petitions pending in the FAP are waiting tribal, not BIA, action. Of the remaining ten (10) cases, three (3) are under active consideration;[185] one (1) has been resolved

[173] Branch of Acknowledgement and Research, Bur. of Indian Aff., "Detailed Status of Acknowledgement Cases" 8 (April 21, 1993) [hereinafter "BAR Status Report"]. A copy of this document appears as an attachment to this Report. This number includes the most recent submittal. See Bur. of Indian Aff., Dept. of Interior, 17:5 "Indian News: Week-in-Review" 5 (Apr. 23, 1993) (Colorado Winebagoes).

[174] "BAR Status Report," supra note 173, at 7 (Grand Traverse Ottawa, Jamestown S'kllalam, Tunica-Biloxi, Death Valley Timba-Sha, Narragansett, Poarch Creek, Wampanoag, San Juan Paiute). Some have implied that the small number of groups which have passed muster under the recognition regulations demonstrates an inequity or anti-recognition bias in the process. We point out, however, that when the FAP was in its nascent stages, experts agreed that the number of groups eventually recognized would be relatively small. For example, Senator Abourezk stated: "It is my opinion that rather than doubling or even greatly increasing the Federal Government's tribal service population, and a relatively small number of tribes will eventually meet the specified criteria." 123 Cong. Rec. 39279 (Dec. 15, 1977).

[175] Id. at 13 (Lower Muskogee, Eastern Creeks, Munsee-Thames, United Lumbee, Kaweah, Alabama Creek, Southeastern Cherokee, Wolf Band Cherokee, Red Clay, Tchinouk, Samish, MaChis, Miami).

[176] Id. at 7 (Texas Band of Traditional Kickapoos).

[177] Id. at 7 (Lac Vieux Desert Chippewa).

[178] Id. at 7 (Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians).

[179] at 7 (Cow Creek Band of Umpqua, Western Pequot, Aroostook Bank of Micmacs).

[180] at 8 (Potowatomi of Indiana and Michigan).

[181] at 7 (Lumbee, Hattaras Tuscarora, Cherokee of Robeson County, Drowning Creek Tuscarora, Waccamaw Siouan, Cherokee of Hoke County, and Tuscarora Nation).

[182] Id. at 6 (Little Shell, Edisto, Delaware-Munice, Coree, Shawnee, Northeastern Miami, Santee, Alleghenny, Rappahannock, Cherokee of Jackson County, Pembina Chippewa, Cherokee-Powhattan, Wintoon, Cherokees of Southeastern Alabama, Georgia Cherokees, Warroad Chippewa, Mattaponi, Bahwetig Ojibwa, Chukchansi).

[183] Id. at 5–6 (Ione, Shinnecock, Mono Lake, Washoe-Paiute, Antelope Valley Paiute, Maidu, Piscataway, Florida Eastern Creek, Taimahian, Choctaw-Apache, Nanticoke, Cane Break, Tuscola, Kern Valley, Hattadare, Brotherton, Coharie, Schagitcoke, Chumash, Paugusett, Dunlap Monos, San Luis Rey, Wintu, Northern Cherokees, Bart Lake Ottawa, Pahrump Paiutes, Wukchumni, Choinumni, Coastanoan, Ohlone, Paucatuck, Canoncito, Little Traverse Ottawa, Salinan, Ouachita, Meherrin, Amah Ohlone, Etowah Cherokee, Upper Kispoko, Piqua Phio Shawnee, Little River Odawa, Chickamauga Cherokee, Lake Superior Chippewa, Nanticoke Lenni-Lenape, Northern Cherokee, Gun Lake Ottawa, Colorado Winnebago).

[184] Id. at 4 (Delaware of Idaho, Georgia Eastern Cherokee, Traditional Seminole, Jena Choctaw, Huron Potawatomi, Shasta, Little Shell Chippewa, Steilacoom, Nipmuc, Tolowa, Yosemite, Yokayo, Cowlitz, Juaneño, Hayfork Nor-el-muk Wintu, Eastern Pequot, Haliwa-Saponi, Oklewaha, St. Francis/Sokoki Abenaki, Mashpee Wampanoag, Clifton Choctaw, Indian Canyon Mutsun, North Fork Mono, Snoqualmoo, Yuchi).

[185] Id. at 3 (United Houma, Duwamish, Ramapough).

with a proposed negative finding;[186] one (1) has been resolved with a proposed negative finding but the comment period has been left open at the tribe's request;[187] one (1) has been resolved with a proposed positive finding;[188] three (3) are waiting to be placed on active consideration;[189] and one (1) is awaiting review for obvious deficiencies in its petition.[190] Even a cursory examination of these numbers shows that although the majority has claimed there is a backlog of 120 cases, the actual backlog—even counting cases presently under review—is at the very most only seven (7) cases.[191]

In any event, just as the logical solution to the problems posed by the 1956 Lumbee Act is to amend it to correct any impediment to recognition, so too is correction the proper response to allegations that the FAP process in inefficacious. Several bills have been introduced over the past few years to overhaul and streamline the process, the most recent being H.R. 3430 introduced last session by Congressman John J. Rhodes III, the then-Chairman of the Republican Task Force on Indian Affairs, and reintroduced this Session by Delegate Faleomavaega.[192] Despite the chorus of Democrat complaints about the process, though, the majority has never seriously pursued any of these bills in committee, seeming to prefer instead the introduction of a string of ad hoc recognition bills designed to circumvent the process entirely.[193]

Bypassing the process not only ignores the problem, but is unfair to all of the recognized tribes. There exists a formal government-to-government relationship between the recognized tribes and the United States. If Congress creates tribes at will, without meaningful uniform criteria or substantial corroborated evidence that the group is indeed a tribe, then we dilute and weaken that relationship. A sizable majority of tribes have objected to H.R. 334 for just this reason.[194] We have received resolutions that support the FAP process and a strict adherence to a systematic procedure from tribes in twelve states, from regional intertribal organizations representing all the tribes of the Pacific Northwest, Montana and Wyoming, the United South and Eastern Tribes (representing all the tribes from Maine to Florida and west to Louisiana), all of the ten

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[186] Id. at 1 (Mohegan).

[187] Id. at 3 (Snohomish).

[188] Bur. of Indian Aff., Dep't of Interior, 17:6 "Indian News: Week-in-Review" 4–5 (June 3, 1993) (Snoqualmie).

[189] "BAR Status Report," supra note 173, at 3 (Chinook, Pokagon Potawatomi, MOWA Choctaw).

[190] Id. at 3 (Piro/Manso/Tiwa).

[191] This number is arrived at by taking the total of ten pending cases and subtracting the three for which proposed negative or positive findings have been entered.

[192] H.R. 2549, 103d Cong, 1st Sess. (1993). H.R. 2549 is identical to H.R. 3430.

[193] See, e.g., H.R. 2376, 103d Cong., 1st Sess. (1993) (Odawa/Ottawa); H.R. 2366, 103d Cong., 1st Sess. (1993) (Jena Choctaw); H.R. 923, 103d Cong., 1st Sess. (1993) (MOWA Choctaw); H.R. 878, 103d Cong., 1st Sess. (1993) (Pokagon Potawatomi); H.R. 334, 103d Cong., 1st Sess. (1993) (Lumbee). Two other bills dealing with the topic—H.R. 734 and H.R. 2399—are not really recognition legislation and so we do not include them here. See H.R. 2399, 103d Cong., 1st Sess. (1993) (Catawba land claim settlement) (restoration of previously recognised tribe); H.R. 734, 103d Cong., 1st Sess. (1993) (Pascua Yaqui) (modifying previously extended federal recognition).

[194] Resolutions opposing H.R. 334 appear as attachments to this Report. The majority, seeking to dilute the strength of this support, intimates that the tribes oppose the Lumbee recognition because it may dilute the pool of federal funds available to those tribes. The majority, however, produces no evidence to support that inference. Moreover, H.R. 334 makes clear that, if passed, the Lumbee would have to secure appropriations separate from those of the other recognised tribes. In any event, we in no way factor a financial consideration into our position.

southwestern Pueblo tribes, and twenty-five of the twenty-six tribes of Arizona.[195]

Passage of H.R. 334 is also patently unfair to all of the other petitioning groups. If the process is so ineffectual that the Lumbee should be excused from it, then what of the other 100 tribes presently in the process? What of the other ten groups in North Carolina who have petitioned, six of whom are precluded from petitioning by the same 1956 Act of which the Lumbee complain? If the majority decides to recognize the Lumbee in whole or in part because they deem the FAP process to be necrotic, does not equity require that we immediately put before the House bills to provide for the recognition of all these other groups too? It is sadly ironic that the Lumbee have stated that the process is so flawed that they should be excused from it, but that no other group should be.[196] Finally, what about those groups that have been denied recognition under this "superfluous" FAP process; do we now open our doors to them and allow them another bite of the recognition apple? It would be patently unfair to require some groups to be judged under the administrative standards and allow other groups to be judged in Congress under no discernible standards simply because they are able to avail themselves of a powerful and influential sponsor. Should the majority persist in moving this and other ad hoc recognition bills through the House based on this premise, then we will be happy to accede to their argument and introduce separate bills to legislatively recognize each of the 101 groups presently in the BIA process. While dramatic, we believe that such a move would expose the majority's FAP argument for what it is—merely a convenient canard.

Finally, passage of H.R. 334 would be unfair to those North Carolina Indian groups seeking recognition such as the Hatteras Tuscarora. The expansive Lumbee membership criteria, which would be effectively codified by passage of H.R. 334,[197] make Lumbee the descendant of anyone identified as Indian in five North Carolina counties and two South Carolina counties in either the 1900 or 1910 federal census.[198] But note—these census returns do not differentiate among Indian individuals by tribal affiliation; the listings simply say "Indian"—not "Cheraw" or "Croatan" or "Lumbee."[199] Thus, any person listed as Indian in either census—even if she were a Navajo, Shoshone, Catawba, Tuscarora or Cherokee—is considered Lumbee under this bill. Of the ten or so tribal petitioners in North Carelina, five are from Robeson or surrounding counties.[200] The language of H.R. 334 thus subsumes these groups into the Lumbee. We are not convinced of the ultimate efficacy of provisions of that bill added ostensibly to address the con-

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[195] See H.R. Rep. No. 101–57, supra note 69, at 154–74 (reprinting tribal council resolutions opposing legislative recognition of Lumbee). Although those resolutions oppose last Congress' Lumbee bill H.R. 334 is identical to it and we have seen no information showing that any tribe has changed its position.

[196] See 137 Cong. Rec., supra note 138, at H–6894 (Lumbee position paper submitted by Mr. Faleomavaega of American Samoa).

[197] See H.R. 334, 103d Cong., 1st Sess. at 5–6 (section 4(b)(1)).

[198] See Appendix, 1 Lumbee Petition, supra note 38.

[199] See P. Wood, supra note 82, at 90–91; see generally U.S. Census of Population, North Carolina, Robeson Co. (1910).

[200] See H.R. Rep. No. 102–215, supra note 29, at 18 (Additional Views).

cerns of these groups; and in its rush towards passage we note that the majority is apparently indifferent to their plight.

Aside from the obvious inequities to other native groups, we cannot help but consider the effects of a case in which we are wrong in our assessment of a group seeking legislative recognition? As we have repeatedly stressed, we are not equipped to make an informed decision in this area. It has been estimated by one authority that at least fifteen percent of groups currently seeking recognition are essentially bogus Indian groups, or Indian descendent recruitment organizations, composed of predominantly non-Indian persons [201] If we make a mistake, and recognize a group that should not have been accorded that status, then we sully the relationship with the tribes even further.

Moreover, legislative acknowledgement of the Lumbee in the absence of any established recognition criteria raises serious constitutional questions. Despite our plenary power over Indians,[202] Congress may not arbitrarily confer federal recognition as an Indian tribe on any group claiming to be a tribe.[203] If we act to recognize the Lumbee, or any other group, in the absence of any set guidelines, then it seems to us that we act ultra vires—outside the bounds of what is constitutionally permissible.

In conclusion, while the recognition process is in need of repair, it is not as crippled as the majority would have us believe. There is only a backlog of at the most eight petitions, not the 120 cases often cited. While we concede that the process is imperfect, the most rational solution is to fix it. Continually seeking to bypass it only ignores the problem and forces us to address it over and over again. In addition, it undermines the role of the BIA, is unfair to both the recognized and unrecognized tribes, and raises constitutional concerns.

C. PREVIOUS PRECEDENT

Finally, the majority's last rhetorical refuge is to assert that approval of the bill is simply consistent with congressional precedent to enact recognition legislation. Were the principles of stare decisis somehow applicable here, we would remind the majority of the legal axiom that precedent is meant to be a guide, not a straitjacket. However, principles of precedent are not involved here since each of those examples cited by the proponents is easily distinguishable from the 1956 Lumbee Act. Since 1978, the year the BIA promulgated the FAP regulations, Congress has approved seventeen acts pertaining to "recognition" of tribal groups. More than half of the cited acts were bills restoring federal recognition to groups that had once been officially recognized, but were terminated by legislation—a status to which the Lumbee cannot lay claim. The rest involved unique circumstances not applicable to the Lumbee.

The principal stylobate upon which the majority rests its precedent argument is fatally flawed. Attempting to draw an analogy to the Lumbee, their report states:

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[201] William W. Quinn, "Federal Acknowledgement of American Indian Tribes: Authority, Judicial Interposition, and 25 C.F.R. §83," 17 American Indian L. Rev. 37, 43 n.24 (1992).

[202] See Felix S. Cohen, Handbook of Federal Indian Law 89–98 (1942) (citing cases).

[203] See *United States* v. *Sandoval*, 231 U.S. 28, 46 (1913).

> Since the promulgation in 1978 of the regulations governing administrative acknowledgement, the Congress has considered the status of ten other Indian tribes also ineligible for the administrative process. In every case, Congress enacted recognition legislation.[204]

Yet in the very next sentence, in which are cited the ten bills purportedly supporting that thesis, the majority guts its own argument. The legislation cited is not recognition legislation at all but restoration legislation—the word "restoration" appears in the title of each act cited.[205] There is a clear legal distinction between a recognition bill, which establishes the government-to-government relationship between the United States and a tribe for the very first time, and a restoration bill, which simply reinstates a relationship which once existed but was terminated by statute or treaty. No amount of obfuscation can turn one into the other. These nine bills,[206] therefore, cannot possibly serve as precedent for the Lumbee case.

Of the eight remaining acts, four were related to the recognition of tribes in the context of eastern land claims.[207] In these bills, Congress extended recognition to several groups as part of settlements of the tribes' legal claims to land in Maine, Connecticut, and Massachusetts. Another act pertained to a tribe that had already been recognized as part of another tribal entity;[208] one acknowledged a band as a subgroup of another recognized tribe;[209] and one act involved a group that was aboriginally indigenous to Mexico and thus specifically excluded from the administrative regulations.[210]

This leaves only one act, the slightly more analogous Texas Tiwa legislation. Often cited by the Lumbee as the best parallel to their situation, the Tiwa Act differs significantly from the 1956 Lumbee

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[204] Majority Report, ante at [ ]

[205] See Pub. L. No. 101–484, 104 Stat. 1167 (Oct. 31, 1990) (codified at 25 U.S.C. § 983 et seq. (1992 Supp.) (Ponca Restoration Act); Pub. L. 101–42, 103 Stat. 91 (June 28, 1989) (codified at 25 U.S.C. § 715 (1992 Supp.) (Coquille Restoration Act); Pub. L. No. 100–139, § 5(b), 101 Stat. 827 (Oct. 26, 1987) (codified at 25 U.S.C. § 712 et seq. (1988) (Cow Creek Band of Umpqua Restoration Act); Pub. L. No. 100–89, Title II, 101 Stat. 669 (Aug. 18, 1987) (codified at 25 U.S.C. § 731 et seq. (1988) (Coushatta/Alabama Restoration Act); Pub. L. No. 99–398, 100 Stat. 849 (Aug. 27, 1986) (codified at 25 U.S.C. § 566 et seq. (1991 Supp.) (Klamath Restoration Act); Pub. L. 98–481, 98 Stat. 2250 (Oct. 17, 1984) (codified at 25 U.S.C. § 714 (1988)) (Confederated Coos, Lower Umpqua, and Siuslaw Restoration Act); Pub. L. 98–165, 97 Stat. 1064 (Nov. 22, 1983) (Confederated Tribes of Grande Ronde Restoration Act); Pub. L. No. 96–227, 94 Stat 317 (Apr. 3, 1980)(Paiute Restoration Act); Pub. L. No. 95–281, 92 Stat. 246 (May 15, 1978)(Wyandotte, Peoria of Oklahoma, Ottawa of Oklahoma Restoration Act).

[206] While the majority report lists ten acts, we deal with one—the Yaleta del Sur Pueblo—infra.

[207] Pub. L. No. 102–171, 105 Stat. 1143 (Nov. 26, 1991) (codified at 25 U.S.C.A. § 1721 (1993 Supp.)) (Aroostook Band of Micmac); Pub. L. No. 100–95, 101 Stat. 704 (Aug. 18, 1987) (codified at 25 U.S.C. § 1771 et seq. (1988) (Wampanoag); Pub. L. No. 98–134, 97 Stat. 851 (Oct. 18, 1983) (codified at 25 U.S.C. § 1751 et seq. (1988)) (Mashantucket Pequot); Pub. L. 96–420, 94 Stat. 1785 (Oct. 10, 1980) (codified at 25 U.S.C. § 1721 et seq. (1988 & 1993 Supp.)) (Maine Indian Claims Settlement). Although somewhat different from the above-cited statutes, the Miccosukee Act is sufficiently analogous to include here as a land settlement issue. See Pub. L. No. 97–399, 96 Stat. 2012 (Dec. 31, 1982). This would make the number of land settlement acts five. Interestingly enough, in two of these settlement acts Congress deferred to the administrative recognition process and both groups were later recognized by the Secretary of the Interior.

[208] Pub. L. No. 100–420, 102 Stat. 1577 (Sept. 8, 1988) (codified at 25 U.S.C. § 1300h et seq. (1993 Supp.)) (Lac Vieux Desert).

[209] Pub. L. No. 97–429, 96 Stat. 2269 (Jan. 8, 1983) (codified at 25 U.S.C. § 1300b–11 et seq. (1988)) (Texas Band of Kickapoo).

[210] Pub. L. No. 95–375, 92 Stat. 712 (Sept. 18, 1978) (Pascua Yaqui) (codified at 25 U.S.C. § 1300f et seq. (1988)). The recognition regulations apply only to those tribes indigenous to the continental United States, See 25 C.F.R. §§ 83.1(f), (g), (n); 83.3(a) (1991).

Act. In 1968, Congress transferred responsibility over the Tiwa Tribe (now known as the Ysleta del Sur Pueblo) and their lands to the State of Texas, thereby terminating any federal relationship with the tribe.[211] The Act read, in pertinent part:

> Responsibility, if any, for the Tiwa Indians of Ysleta del Sur is hereby transferred to the State of Texas. Nothing in this Act shall make such tribe or its members eligible for services performed by the United States for Indians because of their status as Indians . . . and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to [them].[212]

Congress later reversed itself, thereby restoring recognition to the Tiwa, when informed by the State that the latter could not legally hold tribal land in trust for the tribe.[213]

The differences between this and the 1956 Lumbee Act are readily apparent. First, despite attempts to characterize the Tiwa Act as recognition legislation,[214] it is not; the Tiwa Act was restoration legislation, a status set forth in the very name of the Act itself.[215] As we have previously noted, recognition and restoration are two completely different legal concepts, and consequently the Tiwa Act (restoration) is not precedentially analogous to the Lumbee case (recognition). Furthermore, no similar transfer of responsibility has ever taken place between the United States and North Carolina with regard to the Lumbee, nor has the United States ever held land in trust for this group. As this Committee has noted, unlike the Tiwa case, there has never been any trust responsibility between the United States and the Lumbee.[216] Moreover, the 1968 Tiwa Act specifically refers to the Tiwa as a tribe, a denomination noticeably lacking in the Lumbee Act.

In sum, the 1956 Lumbee Act did not in any way extend federal recognition to the Lumbees. Rather, it merely designated this group of Indians by a particular name to reflect a similar designation made at the state level. This interpretation is borne out by the wording of the Act itself, the legislative history, contemporary news reports, and federal court rulings. While the Act can be read as precluding the Lumbees from petitioning for recognition, the logical solution to that impediment is to amend the Act to remove the bar.

Furthermore, the argument that the Lumbee should be allowed to bypass the process because it is too cumbersome and backlogged is equally specious. While the BIA recognition process is in need of repair, it is not as decrepit as the majority would have us believe. There is only a backlog of nine petitions, not the 120 cases often cited; and while we concede that the process is imperfect, the most rational solution is to fix it. Bypassing the process only ignores the problem, undermines the role of the BIA, and is unfair to both the recognized and unrecognized tribes.

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[211] See Pub. L. No. 90–287, 82 Stat. 93 (Apr. 12, 1968)(not classified in U.S. Code).

[212] Id., § 2.

[213] See Pub. L. No. 100–89, Title I, 101 Stat. 666 (Aug. 18, 1987) (codified at 25 U.S.C. § 1300g et seq. (1988)).

[214] See, e.g., H.R. Hrg. No. 101–57, supra note 69, at 15.

[215] See H.R. Rep. No. 102–215, supra note 29, at 5 (citing the "Ysleta del Sur Pueblo Restoration Act").

[216] See H.R. Hrg. 101–57, supra note 69, at 177 (quoting 1974 report language).

In sum, the Lumbee assertion that approval of this bill is simply consistent with congressional precedent rests upon a flawed rhetorical stylobate. The examples of legislation they cite to support this proposition are either not recognition legislation or are easily distinguishable from the Lumbee case and therefore are of no precedential value.

VI. CONCLUSION

This Committee must decide it will continue to support the utilization of an equitable and standardized method of determining which Indian groups should be recognized by the federal government, or if it will return us to the pre-1978 days of piecemeal and arbitrary recognition through individual bills such as H.R. 334. While it is clearly within our power to recognize Indian tribes, we have tried our hand at it before. Because we did it so badly and so politically, however, leaders from both parties on this Committee and from throughout Indian county insisted on a better way—the administrative FAP process of the BIA. Passage of H.R. 334 in its present form is contrary to the recommendations of the American Indian Policy Review Commission, opposed by the Department of the Interior and the overwhelming majority of tribes, and contrary to logic. It can only serve to undermine further an already beleaguered recognition process, to encourage other groups to circumvent that process, and to place recognition in an arena where emotional arguments, influential sponsors, and the partisan nature of Congress replace merit and fact. For these reasons, we strongly oppose passage of H.R. 334.

CRAIG THOMAS.
JAMES V. HANSEN.
BOB SMITH.
KEN CALVERT.
JAY DICKEY.
ELTON GALLEGLY.
DON YOUNG.
JOHN J. DUNCAN, Jr.
JOHN T. DOOLITTLE.
RICHARD POMBO.
JOEL HEFFLEY.
BARABRA VUCANOVICH.
SCOTT MCINNIS.

APPENDIX

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC 20240, May 3, 1993.

Hon. GEORGE MILLER,
Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: This responds to your request for a report on H.R. 334, a bill "To provide for the recognition of the Lumbee Tribe of Cheraw Indians of North Carolina, and for other purposes."

We oppose the bill because we believe that questions concerning the Indian ancestry and tribal affiliation of the Lumbees need to be resolved before the Department can support Federal recognition of the group. We also believe that the fairest and most expedient way to answer questions concerning Lumbee history would be for the Lumbees to go through the established administrative process (25 CFR 83) as other groups are required to do. Legislative recognition of any group avoids the rigorous and impartial standards upon which the acknowledgment process is based. It would also encourage other unacknowledged groups to avoid having to abide by those standards.

We would favor the introduction of legislation which would clarify the language of the Act of June 7, 1956 "Relating to the Lumbee Indians of North Carolina", (70 stat. 254), so as to allow the group to petition through the acknowledgement process as any other unacknowledged group can.

We will submit very shortly a full report which sets out in detail our concerns about legislative acknowledgement of the Lumbee group. Sincerely,

THOMAS THOMPSON,
Acting Assistant Secretary—Indian Affairs.

Enclosure.

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 334
OFFERED BY MR. THOMAS OF WYOMING

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. AUTHORITY TO PETITION FOR FEDERAL RECOGNITION.

(a) CONSIDERATION OF LUMBEE PETITION.—The Act of June 7, 1956 (70 Stat. 254), shall not be construed to constitute a bar to the consideration by the Secretary of the Interior of a petition of

a group or organization representing the Lumbee Indians of Robeson and adjoining counties of North Carolina.

(b) CONSIDERATION OF OTHER PETITIONS.—The Act of June 7, 1956, shall not be construed to constitute a bar to the consideration by the Secretary of a petition of a group or organization representing any Indians in Robeson or any other county of North Carolina other than the Lumbee Indians.

(c) RECOGNIZED GROUPS.—The Act of June 7, 1956, shall not be construed to operate to deny any group or organization whose petition is approved by the Secretary on or after the date of the enactment of this Act any of the special programs or services provided by the United States to Indian tribes and their members because of their status as Indians.

SEC. 2. CONSIDERATION OF PETITION REQUESTING RECOGNITION AS AN INDIAN TRIBE.

(a) PROPOSED FINDING.—The Assistant Secretary of the Interior for Indian Affairs shall publish a proposed finding with respect to the petition for Federal recognition as an Indian tribe by the Secretary of the Interior pursuant to part 83 of title 25, Code of Federal Regulations, submitted by the Lumbee Regional Development Association on December 17, 1987, and subsequently supplemented, not later than 18 months after the date on which the petitioner has fully responded to the notice of obvious deficiencies regarding that petition.

(b) NUMBER OF MEMBERS NOT A FACTOR.—The number of persons listed on the membership roll contained in the petition referred to in subsection (a) shall not be taken into account in considering such petition except that the Assistant Secretary may review the eligibility of individual members or groups listed in such petition in accordance with the provisions of part 83 of title 25, Code of Federal Regulations.

(c) REVIEW.—(1) If the Assistant Secretary fails to publish the proposed finding referred to in subsection (a) within the 18-month period referred to in such subsection, the petitioner may treat such failure as final agency action refusing to recognize the petitioner as an Indian tribe and seek in Federal district court a determination of whether the petitioner should be recognized as an Indian tribe in accordance with the criteria specified in section 83.7 of title 25, Code of Federal Regulations.

(2) If the Assistant Secretary publishes a final decision refusing to recognize the Indians seeking recognition under the petition referred to in subsection (a), the petitioner may, not later than one year after the date on which the final decision is published, seek in Federal district court a review of the decision, notwithstanding the availability of other administrative remedies.

SEC. 3. CRIMINAL AND CIVIL JURISDICTION.

(a) STATE.—In the event that an Indian tribe is recognized pursuant to the petition referred to in section 2(a), the State of North Carolina shall exercise jurisdiction over all criminal offenses that are committed and all civil causes of action that arise, on lands located within the State that are owned by, or held in trust by the United States for, such tribe or any member of such tribe, or on lands within any dependent community of such tribe, to the same

extent that the State has jurisdiction over any such offense committed elsewhere in the State or over other civil causes of action.

(b) TRANSFER TO THE UNITED STATES.—The Secretary may accept on behalf of the United States, after consultation with the Attorney General of the United States, any transfer by the State of North Carolina to the United States of any portion of the jurisdiction of the State described in subsection (a).

SEC. 4. NO DELAY FOR PETITIONS AWAITING ACTIVE CONSIDERATION.

It is the sense of the Congress that the review of the petition referred to in section 2(a) should not unnecessarily delay the review of the pending fully documented petitions for recognition as an Indian tribe awaiting active consideration as of the date of enactment of this Act.

MARCH 17, 1992.

A MEMORIAL TO THE MEMBERS OF THE U.S. SENATE AND HOUSE OF REPRESENTATIVES ON H.R. 1426, LUMBEE RECOGNITION LEGISLATION

We, the undersigned elected officials of federally recognized Indian tribes from across the United States do hereby memorialize the House of Representatives and Senate of the United States to carefully consider our views on the legislation now pending before the Senate to grant federal recognition to the Lumbee Indians of North Carolina. It is our jointly held view that the Congress should not enact such legislation.

We join in the resolutions previously adopted by many individual tribes as well as by regional inter-tribal Indian organizations including, but not limited to, the Affiliated Tribes of Northwest Indians, the Montana-Wyoming Tribal Chairmen's Association, the Southern Pueblos Governors Council and the Eight Northern Pueblos, all of whom have opposed the enactment of this legislation and insisted that the Lumbees, together with other non-recognized groups of Indians seeking federal recognition, should go through the well established administrative process within the Interior Department known as the Federal Acknowledgement Process (FAP—25 CFR, Part 83). To allow the Lumbees to circumvent the FAP by attaining legislative recognition would be a mistake.

We feel that the FAP is the best available process whereby equitable criteria can be uniformly applied toward petitioning groups of Indians seeking federal recognition and we feel that the process of attaining recognition must be very deliberative, methodical and thorough. Federal recognition is the establishment of a permanent government-to-government relationship and that relationship is one we view as both pivotal and critical to the future well being of our tribes and citizens. The Congress of the United States has not adopted any criteria that it uses in determining the validity of a group's claim to be treated as a federally recognized tribe. If, absent a treaty, no criteria are used and the Congress simply legislatively establishes a federally recognized tribe at will, the government-to-government relationship and the trust responsibility will be weakened for all tribes.

We feel that attempts to revise history by contending that the Lumbees were somehow previously partially recognized are disingenuous and misleading. We object to attempts to muddy the distinction between Restoration bills, which restore the federal relationship for those tribes that were unfortunately terminated; as opposed to Recognition bills, which, like HR 1426, proposed the establishment of the federal relationship for the first time. We support legislation to rectify any obstacles, such as the 1956 legislation, that would impede the processing of the Lumbees FAP petition.

We express our strong concern that HR 1426 would create the third largest tribe in the country (the Lumbees claim a membership of over 40,000 people including thousands in Detroit, Michigan and Baltimore, Maryland) which would completely over-burden existing underfunded BIA and IHS programs. While we do not object to federal services being provided to the Lumbees if they go through the FAP and meet criteria that other non-recognized have met, we strongly object to multi-million expenditures coming from federal tribal programs for a group who may not legitimately constitute a tribe.

We urge the Congress to examine the history of the FAP regulations and to realize that it was a process supported by tribes and the Congress to assure that an equitable, non-arbitrary process could be used in determining which Indian groups should be recognized. If the Congress determines that the FAP needs amending, we would support procedural amendments providing that the existing criteria are not weakened and that all groups seeking recognition be required to adhere to the FAP regulations.

We therefore urge the rejection of HR 1426 by the Senate and we ask the Members of the Senate to vote against the bill and against any attempts to invoke cloture intended to cut off debate on the bill.

Name	Tribe	State
Gerald F. Brun Chairman	of Chippewa Red Lake Band	Minnesota
[illegible]	chairman Band of [illegible]	Minn
Darrell Wadena	White Earth Res.	Minnesota
Principal Chief Jonathan L. Taylor	Eastern Band of Cherokee	North Carolina
[illegible] Taylor	[illegible]	Calif
Burton Hutchinson	Northern Arapahoe Tribe	Wyo
Chief Elmer Manatowa	Sac and Fox Nation	Okla
Daniel Eddy Jr	Colorado River Indian Tribes	Arizona
Tony J. Pinto	Mission Ind.	Calif.
Clarence R. Brown Sr	Mission Ind	California
Bill S. Fife	Muscogee (Creek)	Oklahoma

A-7

Memorial To Congress
Regarding HR 1426

Name	Tribe	State
[illegible]	Cheyenne River Sioux	South Dakota
[illegible]	Lower Brule Sioux	S.D.
[illegible]	Choctaw Nation	OKLA
Phillip Martin	Miss. Band of Choctaw	Mississippi
Bill Follis	MODOC TRIBE OF OK	OKLAHOMA
[illegible]	Devils Lake Sioux	North Dakota
[illegible] Chairman	Nisqually Indian Tribe	WA
Caleb Shields CHM	FORT PECK TRIBES ASSINIBOINE + SIOUX	MONTANA
[illegible]	Zia Pueblo	New Mexico
Marge Anderson	Mille Lacs Band of Ojibwe	Minnesota
[illegible]	ROBINSON RANCHERIA Pomo Tribe	California
[illegible] Sr	Shoshone Bannock Tribes	Idaho
[illegible]	Pueblo of Laguna	New Mexico
Lee A Taylor / LEE A TAYLOR	FLANDREAU SANTEE SIOUX	South Dakota
GOVERNOR [illegible]	San Juan Pueblo	New Mexico
[illegible]	Hopland Reservation	California

COLORADO RIVER INDIAN TRIBES,
COLORADO RIVER INDIAN RESERVATION,
Parker, AZ, September 12, 1988.

Hon. DENNIS DECONCINI,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR DECONCINI: The Colorado River Indian Tribes is opposed to enactment of S. 2672 which would provide for federal recognition and services to the Lumbee Tribe of North Carolina. Federal recognition of an Indian tribe should involve a detailed inquiry into the sovereign status of the group requesting recognition. Such in inquiry should ensure that all pertinent information is available for review and that all tribes seeking federal recognition are treated in an equal manner. The Bureau of Indian Affairs has established a procedure for conducting a detailed inquiry and reviewing petitions for federal acknowledgment, 28 C.F.R. part 83. Requiring tribes to follow this procedure ensures that all those who receive federal acknowledgment are entitled to such recognition and receive equal treatment in the review process. The Tribe requests that you allow the administrative process to function by opposing S. 2672 and requiring the Lumbee Tribe to utilize the administrative process.

Sincerely yours,

ANTHONY DRENNAN, Sr.,
Chairman, Tribal Council.

Enclosures.

SOUTHERN PUEBLOS GOVERNORS COUNCIL,
Albuquerque, NM.

RESOLUTION NO. 88–5

Opposition to Enactment of S. 2672, proposed legislation that would circumvent the Federal Acknowledgement Project and confer Federal recognition upon the Lumbee Indians of North Carolina.

Whereas, the Southern Pueblos Governors Council is comprised of the Pueblos of Acoma, Cochiti, Isleta, Ysleta Del Sur, Jamez, San Felipe, Sandia, Santa Ana, Santo Domingo, Zia, and Zuni; and,

Whereas, these Pueblos have received information that S. 2672, proposes to circumvent the Federal Acknowledge Project and would confer Federal recognition upon the Lumbee Indians of North Carolina; and,

Whereas, this proposed legislation presents too many complex, unresolved issues to be rushed through Congress at this last minute and that Indian Tribes across the nation should be afforded the courtesy of sufficient time to address these issues; and,

Whereas, the Federal Acknowledgement Project (FAP) has established certain objective criteria that must be met and the Lumbee Tribe is obligated to provide satisfactory factual evidence and to wait their turn for other Tribes who have petitioned earlier for recognition; and,

Whereas, the Pueblos are concerned with the precedent that may be established by this bill and its unfairness to other Tribes awaiting their turn seeking recognition; and,

Whereas, the Congress, the Executive Branch, and the Federal Courts have recognized that the United States has a Government-to-Government relationship with Indian Tribes and a trust obligation to them. If Congress creates Indian Tribes at will, without meaningful criteria or substantial evidence that a group is in fact a Tribe within the normal meaning of that term then the Government-to-Government relationship and the trust responsibility will be enormously weakened.

Now therefore be it resolved, the Southern Pueblos Governors Council is opposed to S. 2672 which would circumvent the Federal Acknowledge Project to the Lumbee Indians of North Carolina and that Congress seek an amendment to the 1956 Lumbee Act expressly to qualify the Lumbees for eligibility under the FAP process, Opposition to Enactment of S. 2672, proposed legislation that would circumvent the Federal Acknowledge Project and confer Federal recognition upon the Lumbee Indians of North Carolina.

Be it further resolved, that:

1. Congress appropriate more funds under New Tribes Funding and that the Bureau of Indian Affairs be mandated to include funding and data on the program requirements of newly recognized tribes, rather than taking the funding from existing BIA Programs.

2. A future deadline be established by the Congress for tribes seeking such recognition.

3. If the Lumbees, or any other group petitioning for recognition under FAP, can meet the established standards, the Southern Pueblos Governors Council welcomes them into the community of sovereign, federally recognized Tribes.

CERTIFICATION

This Resolution No. 88–5 was adopted at a duly called meeting of the SOUTHERN PUEBLOS GOVERNORS COUNCIL held on the 14th day of October, 1988, at which time a quorum was present, with *8* voting for, *0* voting against, and *0* abstaining.

By:

STANLEY TENORIO,
Secretary/Treasurer.
CELESTINO GACHUPIN,
Chairman.

BIG PINE BAND OF PAIUTE/SHOSHONE INDIANS,
BIG PINE INDIAN RESERVATION,
Big Pine, CA.

RESOLUTION NO. 89–16

Subject: Federal Recognition 25 CFR Part 83.

Whereas: The Big Pine Tribal Council is the duly elected governing body of the Big Pine Band of Paiute/Shoshone Indians, and

Whereas: the Bureau of Indian Affairs has promulgated rules and regulations contained in 25 CFR Part 83, providing for specific procedures and criteria for Indian groups to petition for the Department of the Interior for Federal recognition, and

Whereas: a number of Indian groups have gone through the existing CFR process, of which some, having met the criteria, were recognized and others, not meeting the criteria were rejected, and

Whereas: legislation was pending in the 100th Congress, and is likely to be reintroduced in the 101st Congress, to legislatively grant federal recognition to the Lumbee Indians of North Carolina, and

Whereas: the proposed Lumbee legislation singles out one petitioning group for expeditious treatment without any true rational or unique reason for doing so and with the knowledge that several tribal groups with meritorious petitions for such recognition will be required to complete the CFR process, and

Whereas: the creation of one of the largest tribes in the United States and the concomitant fiscal outlay estimated at between $90 million to $120 million annually and the establishment of a fiduciary trust relationship with a tribe should not be made without the deliberate and careful consideration of ethonological, historical, legal and political evidence as required by the CFR process, now

Therefore be it resolved: that the Big Pine Tribal Council does hereby state its position that groups of non-federally recognized Indians desiring federal recognition should go through the administrative process whereby a consistent set of criteria can be uniformly and deliberatively applied using ethnological, historical, legal and political evidence and does therefore call upon the Congress to reject legislation granting recognition to the Lumbee Indians of North Carolina.

Be it further resolved: that the Big Pine Tribal Council does hereby call on the Senate Select Committee on Indian Affairs, the House Interior and Insular Affairs Committee and the Interior Appropriations Sub-Committees to hold oversight hearings, including field hearings, in the 101st Congress, on the existing Bureau of Indian Affairs procedures (25 CFR, Part 83) including the adequacy and timeliness of the existing process as well as sufficiency of budget and staff at the Branch of Acknowledgement and Research and to make recommendations for changes to the existing process if so warranted.

Be it further resolved: that the Big Pine Tribal Council does support, at the least, the proposed $650,000 increase for FY 1990 for the Branch of Acknowledgement and Research to enable the Bureau to more expeditiously process the pending Lumbee and other Indian Groups petitioned.

CERTIFICATION

This said resolution was passed by the duly elected Tribal Council Members of the Big Pine Indian Reservation. This foregoing resolution was adopted and approved on March 8, 1989, with a quorum present and voting 3 For, 0 Against, and 0 Abstaining. This said resolution has not been rescinded or amended in any way.

Attest:

TOM LONEEAGLE,
Chairperson.
WILLIAM BOWERS,
Secretary.

KAW TRIBE OF OKLAHOMA,
Kaw City, OK.

RESOLUTION 89-10

A RESOLUTION TO SUPPORT THE USE OF ESTABLISHED CRITERIA IN CONSIDERATION OF THE LUMBEE INDIANS' PETITION TO BE FEDERALLY RECOGNIZED

Whereas, the Kaw Tribe of Oklahoma is federally recognized by the Secretary of the Interior by a Governing Resolution adopted and ratified on October 7, 1958, and

Whereas, the Kaw Tribal Business Committee is the governing body of the Kaw Tribe of Oklahoma, and

Whereas, legislation was pending in the 100th Congress, and is likely to be reintroduced in the 101st Congress, to legislatively grant federal recognition to the Lumbee Indians of North Carolina; and

Whereas, the American Indian Policy Review Commission, the Congress of United States and the National Congress of American Indians have all previously called for the establishment of a consistent set of criteria and a special office through which unrecognized groups of Indians could petition for federal recognition; and

Whereas, the Bureau of Indian Affairs has responded to such recommendations by promulgating rules and regulations contained in 25 CFR, Part 83, providing for specific procedures and criteria for Indian groups to petition the Department of the Interior for federal recognition; and

Whereas, a number of Indian groups have gone through the existing CFR process, of which some, having met the criteria, were recognized and others, not meeting the criteria were rejected; and

Whereas, the proposed Lumbee legislation singles out one petitioning group for expeditious treatment without any true rational or unique reason for doing so and with the knowledge that several tribal groups with meritorious petitions for such recognition will be required to complete the CFR process; and

Whereas, the creation of one of the largest tribes in the United States and the concomitant fiscal outlay estimated at between $90 million to $120 million annually and the establishment of a fiduciary trust relationship with a tribe should not be made without the deliberate and careful consideration of ethnological, historical, legal and political evidence as required by the CFR process;

Therefore be it resolved, with full authority and approval, a quorum being present, the Kaw Tribal Business Committee does hereby state its position that groups of non-federally recognized Indians desiring federal recognition should go through the an administrative process whereby a consistent set of criteria can be uniformly and deliberatively applied using ethnological, historical, legal and political evidence and does therefore call upon the Congress to reject legislation granting recognition to the Lumbee Indians of North Carolina.

Be it further resolved, that the Kaw Tribal Business Committee does hereby call on the Senate Select Committee on Indian Affairs, the House Interior and Insular Affairs Committee and the Interior Appropriations Subcommittees to hold oversight hearings, includ-

ing field hearings, in the 101st Congress, on the existing BIA procedures (25 CFR, Part 83) including the adequacy and timliness of the existing process if so warranted.

Be it finally resolved that the Kaw Tribal Business Committee does support, at least, the proposed $650,000 increase for FY '90 for the Branch of Acknowledgement and Research to enable the Bureau to more expeditiously process the pending Lumbee and other Indian groups' petitions.

CERTIFICATION

I, W. A. Mehojah, Chairman of the Kaw Tribal Business Committee, do hereby certify that said resolution was approved and adopted on March 11, 1989, as an official act by quorum vote of the Kaw Tribal Business Committee and that the vote was: 5 for; 0 against; 0 abstentions; and 1 absent.

W. A. MEHOJAH,
Chairman.

Raleigh, NC, August 17, 1988.

Hon. JESSE HELMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: The Tuscarora Indian Community of Eastern North Carolina would like to enlist your help concerning the Lumbee Recognition Act. We like other eastern Indian groups have petitions for recognition under the Federal Acknowledgement Procedure. Will we get the same treatment as the treatment and consideration as the Lumbees?

Secondly, the bill will seriously hurt our efforts for recognition because of it's wording. For years now we have been trying to get from under the 1956 Lumbee Indian Act which designated all the Indians of Robeson and surrounding Counties as Lumbee Indians. However there were and still is other Indian tribes in that specified area. They are recognized by the state of North Carolina as separate tribal entities. They are the Osharia Indians and the Wassesaw-Souian Indians. Are they also Lumbees? By the 1956 Act, they are because they live in counties that surround Robeson County. What about our people who live in Maxton and adjoining townships of western Robeson County? Are we Lumbees? No. Yet we will all fall into the designation as Lumbees. We will never be Lumbee Indians. We would rather die than give up our tribal heritage.

So this new bill forces us to deny our heritage. A heritage that is older and has more of a historical basis. We are a separate tribal entity. We are desirous of preserving and confirming our tribal heritage. We would like to ask you if you can get them to change the bill. So it will either recognize us as a separate tribal entity or put a clause in it making it not applicable to us. We would prefer the first named item. Any assistance you can give us will be deeply appreciated.

Sincerely yours,

A.J. AUSTIN.

THE SAULT STE. MARIE TRIBE,
CHIPPEWA INDIANS,
Sault Ste. Marie, MI, February 20, 1989.

Senator DANIEL K. INOUYE,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR INOUYE: I am writing today to request that you act to insure the established criteria be followed in regards to the Lumbee recognition issue. We are very concerned with attempts by the Lumbee group to circumvent existing criteria.

It is the position of the Sault Ste. Marie Band of Chippewa Indians that all groups seeking federal recognition should follow the established guidelines for federal recognition. Furthermore should the existing guidelines need clarification all federally recognized tribes should have input into any changes in that criteria. Finally we oppose any circumvention of the existing criteria for federal recognition.

It is the position and opinion of the Sault Ste. Marie Tribe of Chippewa Indians that the existing criteria is sufficient for establishing recognition for an Indian group.

We feel the underlying reasons for the lengthy delays in the recognition process is the small operating budget the Bureau of Acknowledgement and Records has to service such claims. We feel the best way to correct the process would be more appropriations for the Bureau of Acknowledgement and Records.

We request you act to insure the established criteria is followed in the recognition of any Indian group. We ask that our views be acknowledged as part of the public input on this matter.

In closing Mr. Chairman and Distinguished Members, I would like to extend my appreciation for the opportunity to enlighten your committee on this matter.

Respectfully,

BERNARD BOUSCHOR,
Tribal Chairman.

UNITED SOUTH EASTERN TRIBES, INC.,

RESOLUTION NO. 8-88-193

Whereas, the United South and Eastern Tribes is an inter-tribal Council composed of seventeen federally recognized tribes in the Eastern United States; and

Whereas, from time to time, various groups have approached the Board of Directors seeking support for their positions for Federal recognition; and

Whereas, an established set of criteria exists within the Bureau of Indian Affairs to obtain said recognition.

Now, therefore, be it resolved that the Board of Directors of United South and Eastern Tribes hereby supports any group that can successfully meet said criteria in their efforts to obtain Federal recognition.

CERTIFICATION

The above resolution was duly passed at the Board of Directors meeting, at which a quorum was present, in Washington, DC.; February 16–18, 1988.

JOEL M. FRANK,
President, United South & Eastern Tribes, Inc.
HAROLD TARBELL,
Secretary, United South & Eastern Tribes, Inc.

CHEROKEE COUNCIL HOUSE,
Cherokee, NC, February 5, 1988.

RESOUTION NO. 116 (1988)

Whereas, a petition has been submitted to the The United South and Easter Tribes, Inc. (USET) for that Indian organization to support a request for recognition of the Lumbee as a federal Indian tribe; and,

Whereas, both the Eastern Bank of Cherokee Indians and USET has in the past opposed federal recognition of the Lumbeee on specific grounds; and,

Whereas, the Eastern Band memorialized its position on the federal recognition of any Indian group by specific objective standards in Resolution No. 216 (1974); and,

Whereas, the Eastern Band does reaffirm its consistent policy in this regard and requests USET not to support a request for federal recognition by Lumbee or any other Indian group until or unless they satisfy the proviously established criteria.

Now, therefore, be it resolved, by the Tribal Council of the Eastern Band of Cherokee Indians, in Annual Council assembled, with a quorum present, that The United South and Eastern Tribes, Inc. is hereby requested not to support any request for federal recognition for tribal status by Lumbee or any other group unless or until such group satisfies at least four of the following seven criteria for Indian tribal status:

(1) A history of entering treaties with the United States Government.

(2) Show enrollment with a federally recognized Indian tribe.

(3) Inclusion in the most recent BIA census.

(4) Substantial evidence of Indian language, history, foods, technology and religion.

(5) Recognition by national Indian tribal organizations to be a member of the root race or aborigine.

(6) Have a claim settled by or before the United States Claims Commission.

(7) Be an offspring of sufficient blood quantum recognized by the tribe, with proof of parents qualified under any four of the above.

MONTANA/WYOMING
TRIBAL CHAIRMEN'S ASSOCIATION,
Billings, MT, September 16, 1938.

RESOLUTION OF THE MONTANA/WYOMING TRIBAL CHAIRMEN'S ASSOCIATION

Whereas, legislation has been introduced in the Congress of the United States to legislatively grant Federal recognition to the Lumbee Indians of North Carolina, and

Whereas, there exists in the Code of Federal Regulations (25 CFR Part 83) a specific procedure and criteria for Indian groups to petition the Department of the Interior for Federal recognition, and

Whereas, this section of the CFR was established pursuant to pressure on the Bureau of Indian Affairs (BIA) by tribes and Congress to establish a consistent set of criteria under which Indian groups should petition for recognition, and

Whereas, the NCAI resolution that led to the establishment of these regulations called for, "A valid and consistent set of criteria applied to every group which petitions for recognition. The criteria applied to every group which petitions for recognition. The criteria must be based on ethnological, historical, legal, and political evidence," and

Whereas, a number of groups have gone through the existing CFR, some which have been successful and some who have not met the criteria, have been rejected for recognition, and

Whereas, a number of groups, including one in Montana, are presently in the midst of having their petitions reviewed, and

Whereas, there is no justifiable reason for the Lumbee to be allowed to circumvent the established process by instead seeking legislative recognition, and

Now therefore be it resolved that the Montana/Wyoming Tribal Chairmen's Association meeting in Billings, Montana, on September 15 and 16, 1988, does hereby go on record in opposition to S.2572 and H.R. 5042 and urges the Senate Select Committee on Indian Affairs and the House Interior Committee to reject the legislation thereby allowing the pending Lumbee petition to be processed in a manner similar to other groups.

Resolution adopted by unanimous vote, September 16, 1988.

Tribal Chairmen present: Gary Collings, Arapahoe Tribe; Tom Whitford, Blackfeet Tribe; Michael T. Paplo, Confederated Salish and Kootenai Tribes; Richard Real Bird, Crow Tribe; Gilbert Horn, Gros Ventre and Assiniboine Tribes; Robert Bailay, Northern Cheyenne Tribe; and John Washakie, Shoshone Tribe.

GARY COLLINS,
Montana / Wyoming Tribal Chairmen's Association.

Resolution No. 88–215

RESOLUTION OF THE GOVERNING BODY OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION, MONTANA

Resolution in opposition of S. 2672 and H.R. 5042 (the Lumbee Recognition Act) and urging the Senate Select Committee on Indian Affairs and the House Interior Affairs Committee to reject the legislation thereby requiring the Lumbee petition to proceed in accordance with the procedure of Title 25 of the Code of Federal Regulations (CFR), part 83.

Whereas, the above referenced legislation has been introduced in the Congress of the United States to legislatively grant federal recognition to the Lumbee Indians of North Carolina; and

Whereas, upon the recommendation of the National Congress of American Indians there were promulgated rules and regulations contained in 25 CFR, part 83 providing for specific procedures and criteria for Indian groups to petition the Department of Interior for federal recognition; and

Whereas, a number of Indian groups have gone through the existing CFR process, of which some, having met the criteria, were recognized and others not meeting the criteria were rejected; and

Whereas, the legislation singles out one Indian group for expeditious treatment in the face of a lack of any rational reason for doing so and with the knowledge that several tribal groups with meritorious petitions for such recognition, including the Little Shell Band of Montana, will be required to complete the CFR process; and

Whereas, the creation of the second largest Indian tribe in the United States and the concomitant fiscal burden estimated in excess of One Hundred Million Dollars ($100,000,000.00) should not be made without the deliberate and careful consideration of ethnological, historical, legal and political evidence as required by the CFR process;

Now, therefore, be it resolved, that the Confederated Salish and Kootanai Tribes of the Flathead Reservation, hereby records its opposition to the "Lumbee Recognition Act" and urges that the act be rejected, and that the Lumbee petition for recognition be allowed to take its course within the Department of Interior process set out in 25 CFR, part 83.

CERTIFICATION

The foregoing resolution was duly adopted on the 16th day of September, 1988, by the Tribal Council of the Confederated Salish and Kootenai Tribes of the Flathead Reservation with a vote of 8 for, and 0 opposed, and 0 not voting, pursuant to the authority vested in it by Article VI, Section 1 (a), (c), (e), (g) and (u) of the Tribal Constitution, adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

Fred Matt
Chairman, Tribal Council.

AFFILIATED TRIBES OF NORTHWEST INDIANS,
1988 ANNUAL CONVENTION,
Kalispall, MT.

RESOLUTION NO. 88–58

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendents-rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and several States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

Whereas, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of the advocates for national, regional, and specific tribal concerns and

Whereas, the Affiliated Tribe of Northwest Indians is a regional organization comprised of American Indians in the states of Washington, Idaho, Montana, Oregon, Nevada, northern California, and Alaska; and

Whereas, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of Affiliated Tribes of Northwest Indiana; and

Whereas, the existing tribes in the United States and the Bureau of Indian Affairs have established a Federal Acknowledgement process, known as the Bureau of Acknowledgement and Research (BAR), to review and determine the eligibility of a petitioning tribe to become a Federally Acknowledged Tribal and

Whereas, this BAR process has established criteria that must be met to determine the validity of a petitioning tribe's status as a Federally Acknowledged tribe; and

Whereas, a number of unrecognized tribes in the United States have been denied Federal Acknowledgement through this process (BIA Bureau of Acknowledgement and Research); and

Whereas, many of these same tribes, as well as others, are attempting to become Federally Acknowledged through Congressional legislation as an alternative approach; and

Whereas, Federal Acknowledgement should be based on established research principles rather than political judgments; and

Whereas, ATNI does not believe that the Committees of Congress have the time, resources, expertise, or knowledge of this field to adequately or qualitively research the validity of the acknowledgement of a tribe and that to legislatively acknowledge a new tribe circumvents the existing Bureau of Acknowledgement and Research process; and

Whereas, ATNI is also deeply concerned that this BAR process has sufficient funding, staff, and resources to expeditiously and adequately process the number of petitions that have been submitted through this program; and

Whereas, ATNI is also concerned about the final judgment within the BAR process that makes the final determination of eligibility based on the submitted criteria and feels that the Bureau of Indian Affairs should review this step to determine if a more equitable approach could be incorporated in lieu of the existing procedure; now

Therefore, be it resolved, that Affiliated Tribes of Northwest Indian does hereby urge the President, Congress, National Congress of American Indians, and other tribes in the United States to only acknowledge the existing process known as the BIA Bureau of Acknowledgement and Research as the appropriate process for an alleged Indian Tribe to become Federally Acknowledged; and

Be it further resolved, that due to the magnitude of petitions submitted through this process and the backlog that currently exists, ATNI encourages the Bureau of Indian Affairs and Congress to increase the funding, staff, and resources of the BAR program, as well as review the procedures and criteria of the process to increase the accuracy and effectiveness of the process, as well as determine the fairness of the criteria and the appropriateness of the final determination step.

CERTIFICATION

The foregoing resolution was adopted at the 1988 Annual Convention of the Affiliated Tribes of Northwest Indians, at the Cavanaugh's Hotel in Kalispall, Montana on October 4–7, 1988 with a quorum present.

JOE DELACRUZ,
President.
GEORGIA C. GEORGE,
Recording Secretary.

CABAZON BAND OF MISSION INDIANS,
Indio, CA.

RESOLUTION 3–1–89–1

Re: Support for Eastern Band of Cherokees.

Whereas: legislation was pending in the 100th Congress, and is likely to be reintroduced in the 101st Congress, to legislatively grant federal recognition to the Lumbee Indians of North Carolina; and

Whereas: the American Indian Policy Review Commission, the Congress of the United States and the National Congress of American Indians have all previously called for the establishment of a consistent set of criteria and a special office through which unrecognized groups of Indians could petition for federal recognition; and

Whereas: the Bureau of Indian Affairs has responded to such recommendations by promulgating rules and regulations contained in 25 CFR, Part 83, providing for specific procedures and criteria for Indian groups to petition the Department of the Interior for federal recognition; and

Whereas: a number of Indian groups have gone through the existing CFR process, of which some, having met the criteria, were recognized and others, not meeting the criteria were rejected; and

Whereas: the proposed Lumbee legislation singles out one petitioning group for expeditious treatment without any true rational or unique reason for doing so and with the knowledge that several tribal groups with meritorious petitions for such recognition will be required to complete the CFR process;and

Whereas: the creation of one of the largest tribes in the United States and the concomitant fiscal outlay estimated at between $90 million to $120 million annually and the establishment of a fiduciary trust relationship with a tribe should not be made without the deliberate and careful consideration of ethnological, historical, legal and political evidence as required by the CFR process;

Now therefore be it resolved that the Cabazon Band of Mission Indians does hereby state its position that groups of non-federally recognized Indians desiring federal recognition should go through an administrative process whereby a consistent set of criteria can be uniformly and deliberately applied using ethnological, historical, legal and political evidence and does therefore call upon the Congress to reject legislation granting recognition to the Lumbee Indians of North Carolina.

Be it further resolved that the Cabazon Band of Mission Indians does hereby call on the Senate Select Committee on Indian Affairs, the House Interior and Insular Affairs Committee and the Interior Appropriations Subcommittees to hold oversight hearings, including field hearings, in the 101st Congress, on the existing BIA procedures (25 CFR, Part 83) including the adequacy and timeliness of the existing process as well as sufficiency of budget and staff at the Branch of Acknowledgment and Research and to make recommendations for changes to the existing process if so warranted.

Be it finally resolved that the Cabazon Band of Mission Indians does support, at the least, the proposed $650,000 increase for FY '90 for the Branch of Acknowledgment and Research to enable the Bureau to more expeditiously process the pending Lumbee and other Indian groups' petitions.

CERTIFICATION

Be it resolved that at a duly called Tribal Business Committee meeting held on March 1, 1989 a quorum was present to conduct business on behalf of the Cabazon Tribal Council under the General Council of the Cabazon Band of Mission Indians by Resolution providing authorization of authority to the Cabazon Business Committee to take any and all action the General Council could take. A vote was cast as follows: 5 for, 0 against, 0 abstaining.

ARTHUR WELMAS,
Tribal Chairman.
BRENDA JAMES,
1st Vice Chairman.
JOHN JAMES,
Secretary-Treasurer.
CHARLES WELMAS,
2nd Vice Chairman.
ELISA WELMAS,
Liaison to the General Council.

WALKER RIVER PAIUTE TRIBE
WALKER RIVER INDIAN RESERVATION
Schurz, NV.

RESOLUTION NO. WR–62–89

RESOLUTION OF THE GOVERNING BODY WALKER RIVER PAIUTE TRIBE

Be it resolved by the Tribal Council of the Walker River Paiute Tribe that:

Whereas, the governing body of the Walker River Paiute Tribe is organized under the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat 984) as amended, to exercise certain rights of home rule and be responsible for the promotion of the economic and social welfare of its members, and

Whereas, legislation is now pending in the Congress to legislatively grant federal recognition to the Lumbee Indians of North Carolina and,

Whereas, the American Indian Policy Review Commission, the Congress of the United States and the National Congress of American Indians have all previously called for the establishment of a consistent set of criteria and a special office through which unrecognized groups of Indians could petition for federal recognition and,

Whereas, The Bureau of Indian Affairs has responded to such recommendations by promulgating rules and regulations contained in 25 CFR, Part 83, by providing for specific procedures and criteria for Indian groups to petition the Department of the Interior for federal recognition and,

Whereas, more than twenty Indian groups have gone through the existing CFR process, with those meeting the criteria being recognized and those not meeting the criteria being rejected and,

Whereas, the proposed Lumbee bill singles out one petitioning group for expeditious treatment without any true rationale or unique reason for doing so and with the knowledge that several tribal groups with meritorious petitions for such recognition will be required to complete the CFR process and,

Whereas, the creation of one of the largest tribes in the United States, with approximately 40,000 members and the expected fiscal outlay establishment of a fiduciary trust relationship with a tribe should not be made without the deliberate and careful consideration of ethnological, historical, legal and political evidence as required by the CFR process.

Now therefore, be it resolved, by the Tribal Council of the Walker River Paiute Tribe, that the Walker River Paiute Tribe does hereby state its position that groups of non-federally recognized Indians desiring federal recognition should go through an administrative process whereby a consistent set of criteria can be uniformly and deliberatively applied by historians and anthropologists using ethnological, historical, legal and political evidence, and the Walker River Paiute Tribe does therefore call upon the Congress to reject legislation that would grant recognition to the Lumbee Indians of North Carolina.

Be it further resolved, that the Walker River Paiute Tribe does support the proposed funding increase for FY '90 for the Branch of Acknowledgment and Research (BAR) to enable the Bureau to

more expeditiously process pending petitions and does hereby call upon the Congress to support this and further increases in the BAR budget if needed.

Be it further resolved, that should the Interior Solicitor indicate that the 1956 Lumbee legislation creates an obstacle to processing the ruling on the Lumbee BAR petition, the Walker River Paiute Tribe would support an amendment to that Act clarifying that nothing in said Act should effect the ability of the BIA to process and rule on the merits of the pending Lumbee recognition petition.

Be it further resolved, that the Walker River Paiute Tribe does hereby support legislation similar to S. 912 as introduced by Senator John McCain to establish meaningful and realistic time frames for the BIA to process pending petitions for recognition and which also preserves the existing well established criteria as contained in 25 CFR, Part 78.

CERTIFICATION

It is hereby certified that the foregoing resolution of the Walker River Paiute Tribal Council composed of seven members, of whom 6 constituting a quorum were present at a meeting held on the 12th day of October, 1989, and that the foregoing resolution was adopted by the affirmative vote of 5 FOR, 0 AGAINST and 0 ABSTAINED pursuant to the authority contained in Article VI, Section I(e), of the Constitution and By-Laws of the Walker River Paiute Tribe Of Nevada, approved on March 26, 1937.

COLLEEN SIDES,
Council Secretary, Walker River Paiute Tribe.

SUMMARY STATUS OF ACKNOWLEDGMENT CASES

PETITIONS—PETITIONS PENDING = 35

BAR's Action Items—9

Active Consideration: 5.
Final Determinations: 1—Mohegan.
Proposed Findings: 4—Snoqualmie, United Houma Nation, Duwamish (under contract), Ramapough.
Waiting to be Placed on Active Consideration: 3—Chinook Indian Tribe, Pokagon Potowatomi, MOWA Band of Choctaw.
Deficiency Reviews: 1—Piro/Manso/Tiwa Indian Tribe of the Pueblo of San Juan de Guadalupe.

Petitioner's Action Item—26

Commenting on Proposed Findings: Snohomish, 1.
Responding to Deficiencies, 25.

LETTERS OF INTENT TO PETITION—LETTERS OF INTENT = 65

Preparing Petition/In Contact With BAR: 46.
Inactive/Does not respond to BAR Inquiries: 19.

IN LITIGATION—CASES BEING LITIGATED = 3

Samish (Denied Acknowledgment).
San Juan Paiute (Acknowledged).

Ione (Ltr of Intent to Petition).

CASES RESOLVED—CASES RESOLVED = 28

By Department—23

Through Acknowledgment Process: Acknowledged, 8; Denied Acknowledgment 13.
Determined part of Recog'd Tribe: 1—Texas Kickapoo.
Status Clarified by Legislation at Department's Request: 1—Lac Vieux Desert.

By Congress—4

Legislative Restoration: 1—Confederated Tribes of Coos, Lower Umpqua & Siuslaw, OR.
Legislative Recognition: 3—Cow Creek Band of Umpqua, Western (Mashantucket) Pequot, Aroostook Band of Micmacs.

By Other Means—1

Merged with another petitioner: 1.

CASES REQUIRING LEGISLATIVE ACTION—TOTAL CASES = 7

(Legislation required to permit processing under 25 CFR 83): Lumbee Regional Development Assn., Hatteras Tuscarora Indians, Cherokees of Robeson & Adjoining Cos., Tuscaroras, Drowning Creek, Waccamaw Siouan Devlpmt Assn, Cherokees of Hoke Co., Tuscarora Nation of NC.

DETAILED STATUS OF ACKNOWLEDGMENT CASES

PETITIONS—35

Bar's Action Items—9

Under Active Consideration—5

Final Determinations—1

1032—Mohegan Indian Tribe, CT (#38) (A/C 11/3/87; *pending*, proposed neg finding pub'd 11/9/89; comments complete 3/1/91).

Proposed Findings—4

425—Snoqualmie Indian Tribe, WA (#20) (A/C 5/21/90; Anthro section under contract).
17657—United Houma Nation, Inc., LA (#56) (A/C 5/20/91; proposed finding due 11/20/92).
356—Duwamish Indian Tribe, WA (#25) (A/C 5/1/92 under contract).
c2500—Ramapough Mountain Indians, Inc., NJ (#58) (A/C 7/14/92).

Waiting to be Placed on Active Consideration—3

These petitions have been reviewed for obvious deficiencies in accordance with 25 CFR 83.9(b); petitioners have corrected deficiencies and/or have stated that their petition should be considered "ready" for active consideration.
Chinook Indian Tribe, Inc., WA (#57) (doc'n recv'd 6/12/81; OD ltr 3/8/82; rspns recv'd 7/23/87; 2nd OD ltr 11/1/88; complete, "ready" 8/13/92).

c2500—Pokagon Potawantomi Indians of Indiana & Michigan, IN (#75/78) (doc'n recv'd 11/2/88; OD ltr 2/22/90; rspns recv'd 6/13 & 9/18/91; complete, "ready" 9/18/91).

3250—MOWA Band of Choctaw, AL (#86) (doc'n recv'd 4/28/88; OD ltr 2/15/90; rspns recv/d 11/8/91; complete, "ready" 11/19/91).

Deficiency Reviews ("OD")—1

These are documented petitions which are under staff review or awaiting review for obvious deficiencies under 25 CFR 83.9(b). (* = under review).

Piro/Manso/Tiwa Indian Tribe of the Pueblo of San Juan de Guadalupe (formerly Tiwa Indian Tribe), NM (#5) (doc'n recv'd 3/24/92).

PETITIONER'S ACTION ITEMS—26

Commenting on Proposed Finding—1

836—Snohomish Tribe of Indians, WA (#12) (*pending;* proposed negative finding pub'd 4/11/83; edited staff notes provided 3/25/91; comment period reopened 12/1/91, extended to 4/3/93 at petitioner's request).

Responding to Deficiencies—25

These petitions have been reviewed by staff in accordance with 25 CFR 83.9(b); although petitioners have been advised both orally and in writing of obvious deficiencies ("OD letter"), the petitioner has not officially responded to the deficiencies or has responded, but only in part.

Delawares of Idaho (#55) (doc'n recv'd 6/14/79; OD ltr 9/24/79; partial response 12/10/79).

Georgia Tribe of Eastern Cherokees, Inc. (aka Dahlonega), GA (#41) (doc'n recv'd 2/5/80; OD ltr 8/22/80).

Seminole Nation of FL (aka Traditional Seminole) (#89) (doc'n recv'd 11/10/82; OD ltr 10/5/83, lacks genealogy; partial rspns 12/7/83).

Jena Band of Choctaws, LA (#45) (doc'n recv'd 5/2/85; OD ltr 9/11/86; response 11/25/86; 2nd OD ltr 10/1/87).

Huron Potawatomi Band (#9) (doc'n recv'd 2/3/87; OD ltr 10/13/87).

Shasta Nation, CA (#83) (doc'n recv'd 7/24/84; OD ltr 5/30/85; response 6/8/86; 2nd OD ltr 10/22/87).

Little Shell Tribe of Chippewa Indians of MT (#31) (OD ltr 4/18/85 partial response 11/2/87, 10/26/89; "not ready" 8/17/90).

Steilacoom Tribe (#11) (doc'n recv'd 10/27/86; OD ltr 11/30/87).

Nipmuc Tribal Council of MA (#69) (doc'n recv'd 7/20/84; OD ltr 3/1/85; response 6/12/87; 2nd OD ltr 2/5/88).

Tolowa Nation, CA (#85) (doc'n recv'd 5/12/86; OD ltr 4/6/88).

American Indian Council of Mariposa County (aka Yosemite), CA (#82) (doc'n recv'd 4/19/84; OD ltr 5/1/85; rsp 12/12/86; 2nd OD ltr 4/11/88).

Yokayo, CA (#104) (doc'n recv'd 3/9/87; OD ltr 4/25/88).

Cowlitz Tribe of Indians, WA (#16) (doc'n recv'd 2/1/83; OD ltr 6/15/83; response 2/10/87; 2nd OD ltr 10/21/88).

Juaneno Band of Mission Indians, CA (#84) (doc'n recv'd 2/24/88; OD ltr 1/25/90).

Hayfork Bank of Nor-El-Muk Wintu Indians, CA (#93) (doc'n recv'd 9/27/88; OD ltr 2/26/90).

Eastern Pequot Indians of Connecticut, CT (#35) (doc'n recv'd 5/5/89; OD ltr 3/13/90).

Haliwa-Saponi, NC (#63) (doc'n recv'd 10/19/89; OD ltr 4/20/90).

Oklewaha Band of Seminole Indians, FL (#117) (doc'n complete 2/12/90; OD ltr 4/24/90).

St. Francis/Sokoki Band of Abenakis of VT (#68) ("not ready" 9/18/90).

Mashpee Wampanoag, MA (#15) (doc'n recv'd 8/16/90; OD ltr 7/30/91).

Clifton Choctaw, LA (#30) (ltr/doc'n recv'd c.9/28/90; OD ltr 8/13/91).

Indian Canyon Band of Coastanoan/Mutsun Indians of CA (#112, 6/9/89) (doc'n recv'd 7/27/90; OD ltr 8/23/91).

North Fork Band of Mono Indians, Ca (#90) (doc'n recv'd 5/15/90; OD ltr 10/28/91).

Snoqualmoo of Whidbey Island, WA (#108) (doc'n recv'd 4/16/91); OD ltr 8/13/92).

Yuchi Tribal Organization, OK (#121) (doc'n recv'd 9/9/91; OD ltr 9/14/92).

LETTERS OF INTENT TO PETITION—65

These are typically undocumented letter petitions which state that the group is currently working on the petition and will submit the required documentation at a later date. No action can be taken by staff until a documented petition is received. Petitioners are grouped below by status based on the most recent information available.

Preparing Petition / In Contact with BAR—46

Ione Band of Miwok Indians, CA (#2, 1916).
Shinnecock Tribe, NY (#4, 2/8/78).
Mono Lake Indian Community, CA (#21, 7/9/76).
Washoe/Paiute of Antelope Valley, CA (#22, 7/9/76).
Antelope Valley Paiute Tribe, CA (#22a, 7/9/76).
Maidu Nation, CA (#24, 1/6/77).
Piscataway-Conoy Confederacy & Sub-Tribes, Inc., MD (#28, 2/22/78).
Florida Tribe of Eastern Creek Indians, FL (#32, 6/2/78).
Tsimshian Tribal Council, AK (#36, 7/2/78).
Choctaw-Apache Community of Ebarb, LA (#37, 7/2/78).
Nanticoke Indian Association, DE (#40, 8/8/78).
Cane Break Band of Eastern Cherokees, GA (#41a, 1/9/79).
Tuscola United Cherokee Tribe of FL & AL, Inc., FL (#43, 1/19/79).
Kern Valley Indian Community, CA (#47, 2/27/79).
Hattadare Indian Nation, NC (#49, 3/16/79).
Brotherton Indians of Wisconsin, WI (#67, 4/15/80).
Coharie Intra-Tribal Council, Inc., NC (#74, 3/13/81).
Schaghticoke Indian Tribe, CT (#79, 12/14/81).
Coastal Band of Chumash Indians, CA (#80, 3/25/82).
Golden Hill Paugussett Tribe, CT (#81, 4/13/82).
Dunlap Band of Mono Indians, CA (#92, 1/4/84).

San Luis Rey Band of Mission Indians, CA (#96, 10/18/84).
Wintu Indians of Central Valley, California, CA (#97, 10/26/84).
Northern Cherokee Tribe of Indians, MO (#100, 7/26/85).
Burt Lake Band of Ottawa & Chippewa Indians, Inc., MI (#101, 9/12/85).
Pahrump Band of Paiutes, NV (#105, 11/9/87).
Wukchumni Council, CA (#106, 2/22/88).
Choinumni Council, CA (#109, 7/14/88).
Coastanoan Band of Carmel Mission Indians, CA (#110, 9/16/88).
Ohlone/Coastanoan Muwekma Tribe, CA (#111, 5/9/89).
Paucatuck Eastern Pequot Indians of CT (#113, 6/20/89).
Canoncito Band of Navajos, NM (#114, 7/31/89).
Little Traverse Bay Bands of Odawa Indians, MI (#115, 9/27/89).
Salinan Nation, CA (#116, 10/10/89).
Revived Ouachita Indians of AR & America (#118, 4/25/90).
Meherrin Indian Tribe, NC (#119, 8/2/90).
Amah Band of Ohlone/Coastanoan Indians, CA (#120, 9/18/90).
Etowah Cherokee Nation, TN (#122, 1/2/91).
Upper Kispoko Band of the Shawnee Nation, IN (#123, 4/10/91).
Piqua Sept of Phio Shawnee Indians, OH (#124, 4/16/91).
Little River Band of Ottawa Indians, MI (#125, 6/4/91).
Chickamauga Cherokee Indian Nation of AR & MO (#100a, 9/5/91).
Lake Superior Chippewa of Marquette, Inc., MI (#126, 12/31/91).
Nanticoke Lenni-Lenape Indians, NJ (#127, 1/3/92).
Northern Cherokee Nation of Old Louisiana Terr, MO (#100b, 2/19/92).
GunLake Village Band & Ottawa Colony Band of Grand River Ottawa Indians, MI (#128, 6/24/92).

Inactive / Does not respond to BAR inquires—19

GROUP HAS NOT RESPONDED TO WRITTEN INQUIRIES—(14)

Little Shell Band of North Dakota, ND (#18, 11/11/75).
Four Hole Indian Orgn/Edisto Tribe, SC (#23, 12/30/76).
Delaware-Muncie, KS (#33, 6/19/78).
Coree [formerly Faircloth] Indians, NC (#39, 8/5/78).
Shawnee Nation U.K.B., IN [formerly Shawnee Nation, United Remnant Band, OH] (#48, 3/13/79).
North Eastern U.S. Miami Inter-Tribal Council, OH (#50, 4/9/79).
Santee Tribe, White Oak Indian Community, SC (#53, 6/4/79).
Allegheny Nation (Ohio Band), OH (#60, 11/3/79).
United Rappahannock Tribe, Inc., VA (#61, 11/16/79).
Cherokees of Jackson County, Alabama, AL (#77, 9/23/81).
Christian Pembina Chippewa Indians, ND (#94, 6/26/84).
Cherokee-Powhattan Indian Association, NC (#95, 9/7/84).
Wintoon Indians, CA (#98, 10/26/84).
Cherokees of SE Alabama, AL (#107, 5/27/88).

Efforts to contact have been unsuccessful—(5)

Cherokee Indians of Georgia, Inc., GA (#27, 8/8/77).
Kah-Bay-Kah-Nong (Warroad Chippewa), MN (#46, 2/12/79).
Upper Mattaponi Indian Tribal Association, Inc., VA (#62, 11/26/79).

Consolidated Bahwetig Ojibwas and Mackinac Tribe, MI (#64, 12/4/79).

Chukchansi Yokotch Tribe, CA (#99, 5/9/85).

CASES IN LITIGATION—3

Samish (Denied Acknowledgment 5/6/87).

San Juan Paiute (Acknowledged 3/28/90).

Ione (Letter of Intent to Petition, 1916).

Resolved by Department—(23)

Acknowledged through 25 CFR 83–8

297—Grand Traverse Band of Ottawa & Chippewa, MI (#3) (effective 5/27/80).

175—Jamestown Clallam Tribe, WA (#19) (eff. 2/10/81).

200—Tunica-Biloxi Indian Tribe, LA (#1) (eff. 9/25/81).

199—Death Valley Timbi-Sha Shoshone Band, CA (#51) (eff. 1/3/83).

1170—Narragansett Indian Tribe, RI (#59) (eff. 4/11/83).

1470—Poarch Band of Creeks, AL (#13) (eff. 8/10/84).

521—Wampanoag Tribal Council of Gay Head, MA (#76) (eff. 4/11/87).

188—San Juan Southern Paiute Tribe, AZ (#71) (eff. 3/28/90).

Denied acknowledgement through 25 CFR 83—13

1041—Lower Muskogee Creek Tribe-East of the Mississippi, GA (#8) (effective 12/21/81).

2696—Creeks East of the Mississippi, FL (#10) (eff. 12/21/81).

34—Munsee-Thames River Delaware, CO (#26) (eff. 1/3/83).

1321—United Lumbee Nation of North Carolina and America, CA (#70) (eff. 7/2/85).

1530—Kaweah Indian Nation, CA (#70a) (eff. 6/10/85).

324—Principal Creek Indian Nation, AL (#7) (eff. 6/10/85).

823—Southeastern Cherokee Confederacy (SECC), GA (#29) (eff. 11/25/85).

609—Northwest Cherokee Wolf Band, SECC, OR (#29a) (eff. 11/25/85).

87—Red Clay Inter-tribal Indian Band, SECC, TN (#29b) (eff. 11/25/85).

304—Tchinouk Indians, OR (#52) (eff. 3/17/86).

590—Samish Indian Tribe, Inc., WA (#14) (eff. 5/6/87).

275—MaChis Lower AL Creek Indian Tribe, AL (#87) (eff. 8/22/88).

4381—Miami Nation of Indians of State of IN, Inc., IN (#66) (eff. 8/17/92).

Determined Part of Recognized Tribe—1

650—Texas Band of Traditional Kickapoos, TX (#54) (Determined part of recognized tribe 9/14/81; petition withdrawn).

Status Clarified by Legislation at Department's Request—1

c224—Lac Vieux Desert Bank of Land Superior Chippewa Indians, MI (#6) (legis clarification of recog'n status 9/8/88).

Resolved by Congress—(4)

Legislative Restoration—1

328—Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, OR (#17) (legis restoration 10/17/84).

Legislative Recognition—3

651—Cow Creek Band of Umpqua Indians, OR (#72) (legis recognition 12/29/82).
55—Western (Mashantucket) Pequot Tribe, CT (#42) (legis recog'n 10/18/83 in association with eastern land claims suit).
611—Aroostook Band of Micmacs, ME (#103) (legis recog'n 11/26/91).

Resolved by other means—(1)

Petition withdrawn (merged with another petition)—1

Potawatomi Indians of IN & MI, Inc., MI (#75) and Potawatomi Indian Nation, Inc. (Pokagon), MI (#78) merged; now Pokagon—(#75/78).

CASES REQUIRING LEGISLATIVE ACTION—7

Cases requiring legislation to permit processing under 25 CFR 83—7

Lumbee Regional Development Association (LRDA/Lumbee) (#65).
Hatteras Tuscarora Indians, NC (#34).
Cherokee Indians of Robeson and Adjoining Counties, NC (#44).
Tuscarora Indian Tribe, Drowning Creek Res., NC (#73).
Waccamaw Siouan Development Association, Inc., NC (#88).
Cherokee Indians of Hoke County, Inc., NC (#91).
Tuscarora Nation of North Carolina, NC (#102).
NOTE.— 40 petitioners on hand when Acknowledgement staff organized Oct 1978; 95 new petitioners since Oct 1978.
135 total petitioners, includes 8 groups that initially petitioned as part of other groups, but have since split off to petition independently.

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